498
3-13

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~337.~~ 78

THE COUNTY OF MORGAN, APPELLANT,

vs.

JOHN ALLEN AND EDWIN S. TROWBRIDGE, SURVIVORS OF AARON ARNOLD, DECEASED.

FILED OCTOBER 29, 1877.

No. ~~586.~~ 293

JOHN ALLEN AND EDWIN S. TROWBRIDGE, SURVIVORS, ETC., APPELLANTS,

vs.

THE COUNTY OF MORGAN.

FILED OCTOBER 18, 1878.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

SUPREME COURT OF THE UNITED STATES.

No. 337.

THE COUNTY OF MORGAN, APPELLANT,

vs.

JOHN ALLEN AND EDWIN S. TROWBRIDGE, SURVIVORS OF AARON ARNOLD, DECEASED.

No. 586.

JOHN ALLEN AND EDWIN S. TROWBRIDGE, SURVIVORS, ETC., APPELLANTS,

vs.

THE COUNTY OF MORGAN.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Bond for costs	2	1
Bill	3	2
Exhibit A to bill, transcript in case of Studwell *et al.* *vs.* Illinois River Railroad Company *et al*	26	10
Subpœna	136	46
Order extending rule to answer	138	47
Agreement as to filing answer	138	47
Order extending time to answer	140	48
Order granting leave to answer	140	48
Demurrer to bill	141	49
Answer of Henry E. Dummer	142	50
Answer of County of Morgan	148	52
Exhibits to answer of County of Morgan	164–198	57
Exhibit No. 1. Order of county court to deliver bonds to Illinois River Railroad Company	164	57

	Original.	Print.
Exhibit No. 2. Transcript from Morgan County in suit of Elliott & Brown *vs.* County of Morgan *et al*	165	58
No. 3. Transcript from Morgan County in suit of Richard S. Thomas *vs.* County of Morgan	170	60
No. 4. Transcript from Morgan County in suit of Elliott & Brown *vs.* County of Morgan *et al*	181	63
No. 5. Transcript from Morgan County in suit of Blair *et al. vs.* Illinois River Railroad Company *et al*	192	68
No. 6. Transcript from Morgan County in suit of Blair *et al. vs.* Illinois River Railroad Company *et al*	197	69
No. 7. Transcript from Morgan County in suit of County of Morgan *vs.* Peoria, Pekin and Jacksonville Railroad Company *et al*	198	70
Leave to withdraw demurrer and file answer	219	78
Replication	220	79
Order appointing Stryker special commissioner	221	79
Leave to file amended bill	222	80
Amended bill	222	80
Amended answer	226	81
Suggestion of death of Arnold	231	83
Motion suggesting death of Arnold	231	83
Motion of defendant to suppress evidence	232	84
Default against Morrison and Peoria, Pekin and Jacksonville Railroad Company and decree of reference to A. L. Knapp, special master	234	85
Report of special master	238	86
Complainants' exceptions to special master's report	246	89
Defendants' exceptions to special master's report	248	90
Deposition of Stephen Dunlap	250	91
John Trabue	255	93
William S. Hook	256	94
Issac L. Morrison	258	94
H. G. Whitlock	277	101
H. B. McClure	289	105
E. R. Elliott	293	106
John Allen	307	111
Re-examination of John Allen	316	114
Deposition of William Thomas	318	114
Robert Hockenhull	326	117
Felix G. Farrell	328	118
James Berdan	330	119
Re-examination of William Thomas	336	121
Deposition of Henry E. Dummer	341	123
Re-examination of William S. Hook	353	127
Deposition of Edward S ott	355	128
Re-examination of Isaac L. Morrison	356	128
Deposition of Ralph Reynolds		
Exhibits to depositions taken by Henry Stryker	374–818	134
Exhibit A, agreement as to redemption of bonds	374	134
B, letter from Elliott & Brown to Schooley	374	135
C and D, transcript in case of County Morgan *vs.* Peoria, Pekin and Jacksonville Railroad Company	375	135
E, receipt of county clerk for certain bonds	384	139
F, transcript in case of R. and J. Haines *vs.* Illinois River Railroad Company	385	139

	Original.	Print.
Exhibit G, transcript in case of G. W. Dye *vs.* Illinois River Railroad Company	395	144
H, transcript in case of N. T. Thomas, adm'r, *vs.* Illinois River Railroad Company	407	148
I, transcript in case of Henry Swift *vs.* Illinois River Railroad Company	417	153
K, transcript in case of Stephen Roney *vs.* Illinois River Railroad Company	431	159
L, transcript in case of Harvey O'Neal *et al. vs.* Illinois River Railroad Company	445	166
M, transcript in case of Benjamin Beesley *vs.* Illinois River Railroad Company	456	170
N, transcript in case of Lafayette Schaffer *et al. vs.* Illinois River Railroad Company	463	174
O, transcript in case of Reuben Bergstresser *et al. vs.* Illinois River Railroad Company	469	176
P, transcript in case of Henry McKee *et al. vs.* Illinois River Railroad Company	475	179
Q, transcript in case of James Blair *vs.* Illinois River Railroad Company	486	184
R, transcript in case of Francis Low *vs.* Illinois River Railroad Company	496	189
S, transcript in case of Aaron D. Addis *vs.* Illinois River Railroad Company	504	193
T, transcript in case of County of Morgan *vs.* Peoria, Pekin and Jacksonville Railroad Company	513	197
U, transcript in case of County of Morgan *vs.* Peoria, Pekin and Jacksonville Railroad Company	523	201
V, transcript in case of County of Morgan *vs.* Peoria, Pekin and Jacksonville Railroad Company	534	205
W, William Thomas *vs.* County of Morgan *et al*	542	208
X, Elliott & Brown *vs.* County of Morgan *et al*	548	211
Y, order of the county court Morgan County relating to Illinois River Railroad Company	560	215
Z, stipulation of trustees Illinois River Railroad Company	566	217
AA, proceedings of board of directors Illinois River Railroad Company	567	218
BB, order of county court Morgan County to destroy bonds	570	219
CC, agreement between Illinois River Railroad Company and A. Studwell	572	220
DD, certificate of clerk as to delivery and bonds and payment of interest	594	227
EE, certificate of clerk as to fee paid by Morgan County	595	228
No. 1, copy of proceedings in Morgan County court relative to bonds	596	228
No. 2, register of bonds kept by county clerk	621	236
No. 3, transcript case of James Blair *et al. vs.* Illinois River Railroad Company *et al*	622	237
No. 4, transcript of papers filed in suits *vs* Illinois River Railroad Company and Morgan County	653	247
No. 5, bond and coupons of Morgan County	714	269
No. 6, depositions of Edward R. Elliott and William Brown	725	274
No. 7, order of board of directors authorizing issue of stock	734	277
No. 8, transcript in case County of Morgan *vs.* Peoria, Pekin and Jacksonville Railroad Company	736	278

	Original.	Print
Exhibit No. 9, opinion of court in case of Morgan County *et al. vs.* Thomas *et al*	779	293
No. 10, $1,000 bond and coupons of Illinois River Railroad Company	798	299
No. 11, $500 bond and coupons Illinois River Railroad Company	818	307
Final decree	839	316
Appeal bond of defendants	842	317
Appeal bond of complainants	845	318
Certificate of clerk	847	318
Assignment of errors	848	319

a In the circuit court of the United States for the southern district of Illinois.

JOHN ALLEN AND EDWIN L. TROWBRIDGE
vs.
THE COUNTY OF MORGAN, HENRY E. DUMMER, the Peoria, Pekin and Jacksonville Railroad Company and Isaac L. Morrison. } In chancery.

Appeal to Supreme Court United States.

1 Pleas in the circuit court of the United States of America for the southern district of Illinois held at the city of Springfield, in said district, before the Hon. Thomas Drummond, judge of the seventh judicial circuit, presiding judge of said court, and the Hon. Samuel H. Treat, district judge of said district, associate judge of said court, on Monday, the 16th day of July, at the June term of said circuit court, in the year of our Lord eighteen hundred and seventy-seven, and of our Independence the one hundred and second year.

J. A. JONES,
Clerk.

JOHN ALLEN, EDWIN L. TROWBRIDGE, AND Aaron Arnold
v.
THE COUNTY OF MORGAN, HENRY E. DUMMER, The Peoria, Pekin and Jacksonville Railroad Company and Isaac L. Morrison. } In chancery.

Be it remembered that heretofore, to wit, on the 2nd day of January, in the year of our Lord eighteen hundred and seventy four, came said complainants by Messrs. Dearborn & Campbell, their solicitors, and filed in the office of the clerk of said court their bond for costs, bill, and exhibits thereto, in said entitled cause, which said bond for costs,
2 bill, and exhibits are in the words and figures following, to wit:

Bond for costs.

Circuit court United States of America, southern district of Illinois. To the January term, A. D. 1874. In equity, ss:

JOHN ALLEN, EDWIN L. TROWBRIDGE, AARON Arnold
vs.
THE COUNTY OF MORGAN, HENRY E. DUMMER, The Peoria, Pekin and Jacksonville Railroad Company, Isaac L. Morrison.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 2nd day of January, 1874.

LUTHER DEARBORN.
WASHINGTON H. CAMPBELL.

(Endorsed:) Filed January 2nd, A. D. 1874. J. A. Jones, clerk.

Bill in equity.—Relief.

In the circuit court of the United States for the southern district of Illinois. In equity.

3 To the honorable judges of the circuit court of the United States for the southern district of the State of Illinois, in equity sitting:

John Allen, who is a citizen of the State of Connecticut and a resident of the town of Old Saybrook, in that State, Edwin L. Trowbridge, who is a citizen of the State of New York and a resident of the city of New York in that State, and Aaron Arnold, who is a citizen of the State of New York and a resident of the city of New York in that State, bring this their bill against The County of Morgan (in said State of Illinois), The Peoria, Pekin and Jacksonville Railroad Company, a railroad corporation created by certain legislative acts of the State of Illinois, domiciled in and a citizen of the State of Illinois, and located and having its principal place of business within said southern district of Illinois, and against Isaac L. Morrison and Henry E. Dummer, both of whom are citizens of said State of Illinois & residents of said Morgan County in that State.

And thereupon your orators complain and say that the Illinois River Railroad Company was duly and legally organized under and by force of a statute duly passed by the legislature of the State of Illinois, as a corporation created for the purpose of building and operating a rail-
1 road, the southern terminus of which was to be at Jacksonville, Illinois, in said county of Morgan; that said Illinois River Railroad Company constructed and put in operation its railroad from Pekin, in Tazewell County, in said State of Illinois, to Virginia, in Cass County, Illinois, but failed to complete the whole line of said railroad.

The complainant further show unto your honors that said Illinois River Railroad Company made and executed a deed of trust dated November 1st, 1858, by which the said Illinois River Railroad Company conveyed all and singular its railroad, real estate, tracts, side tracts, franchises, and other property to Alexander Studwell, Lucius Hopkins, and George T. Cobb, as trustees, for the benefit of the bondholders of the said Illinois River Railroad Company, which trust deed was legally and duly executed and delivered, and was duly recorded in the county of Morgan and other counties through which said railroad they ran in the State of Illinois; that the said Illinois River Railroad Company also issued bonds to the amount of one million and twenty thousand dollars, and having twenty years to run from the said first day of No-
5 vember, A. D. 1858, with interest warrants attached to each for the annual interest on the same, all of which said bonds were referred to in the trust-deed, and secured by the provisions of the same. The complainants further state that said one million and twenty thousand dollars in bonds were put upon the market and sold by the said Illinois River Railroad Company to procure funds with which to build and equip said railroad; that said bonds were sold and the funds realized therefrom were invested, as complainants believe and charge, in the construction of said railroad.

The complainants further state and show that they became the purchasers of all of said *bonds* jointly, and now hold each and all of them jointly, the same never having been paid off nor discharged, except as hereinafter stated.

The complainants further state that said interest warrants were pay-

able at a banking-house in the city of New York, and said trust-deed provided that if the said Illinois River Railroad Company failed at any time to meet and pay the annual interest on said bonds all of said bonds might be treated as matured obligations, and the railroad depots,
6 houses, machinery, and all things belonging to said railroad and described in or mentioned in said trust-deed should be surrendered by said railroad company, its agents and servants, to the said trustees, to be owned, operated, and held to the use and benefit of the holders of said bonds.

The complainants farther showeth that said Illinois River Railroad Company failed to meet and pay its interest on said bonds, and on the 12th day of July, 1862, the board of directors of said Illinois Railroad Company, by resolution passed and spread upon its record, ordered the surrender of the road, machinery, and all the property described in said trust deed, to the said Lucius Hopkins, Alexander Studwell and George T. Cobb, trustees, for the use of said bondholders, and accordingly an agent of said trustees took possession of the same.

The complainants further showeth unto your honors that, on the 17th day of December, 1862, the said Alexander Studwell, Lucius Hopkins, and George T. Cobb, as trustees, exhibited their bill in chancery in the circuit court of the United States for the southern district of the State of Illinois, against the Illinois River Railroad Company, Isaac Vail, John Wear and Leonard Wilkie (the last three claiming to hold
7 judgments unsatisfied against the said Illinois River Railroad Company), to foreclose said trust deed, and for a sale of the franchise, road-bed, depots, side tracks, and other property belonging to the said Illinois River Railroad Company, to satisfy said indebtedness; that said suit was prosecuted to final decree, and the said property of the Illinois River Railroad Company was ordered sold by a decree entered in said case on the 16th day of June, 1863; that the master in chancery of the said United States circuit court executed said decree, and sold all and singular the franchise, roadbed, tracts, depots, real estate, machinery, and other property mentioned or described in said trust deed. Said sale was made on or about the first day of October, A. D. 1863; and at said sale your complainants became the purchasers of all and singular the said property for the sum of four hundred thousand dollars; which sum was credited on the sum found due by the decree aforesaid; and the said master in chancery thereupon made and delivered to complainants a deed for the same.

The complainants further state and show that after the due and proper application of the proceeds of said sale there was due and unpaid the balance of said decree amounting to the sum of $1,051,292.56. That at the June term, A. D. 1864, of the said United States circuit court the master in chancery made his report of sale under said decree to
8 said court, which report was fully approved by the said court, and at the same term the said United States circuit court, by virtue of power in it vested, rendered a judgment against the Illinois River Railroad Company for the said sum of $1,061,292.56, and which judgment is in full force, unpaid, and unreversed.

The complainants further state and show that afterwards, and on or about the 6th day of July, 1869, the complainant in said chancery suit, as trustees, as aforesaid, settled all their trust accounts with the said bondholders, and were fully discharged, and said trust declared closed, by an order of said United States circuit court. Complainants file herewith a copy of the bill and exhibits, including a copy of said trust deed and bonds with copy of coupons or interest warrants, the decree of fore-

closure and sale, the master's report of sale, the order confirming the same, the order rendering judgment, and the final order discharging said trustees and closing said trust, and make the same as Exhibit A, and pray that the same be taken and considered as a part of this bill, and from which the facts hereinbefore stated will more fully and at large appear. Complainants further state that an execution was duly issued on said judgment against the said Illinois River Railroad
9 Company, and was duly returned by the marshall of said district, to whom it was directed, wholly unpaid, no property being found liable to levy and sale under the same.

The complainants further state and charge that they are the equitable holders and owners of said judgment, and that the said Alexander Studwell, George T. Cobb, and Lucius Hopkins, as trustees, and in favor of whom as trustees the same was rendered, have no interest whatever in the same or in any proceeds of the same, and that the said $1,0 1,292.56, with interest at six per cent. per annum from the date thereof, is wholly due and unpaid. The complainants further show and state that the Illinois River Railroad Company is insolvent and has been dissolved, and has no organization and no officers authorized to meet or act; that its board of directors l s not held a meeting since the 12th day of July, 1862, and that said corporation has no existence.

The complainants further state and show unto your honors that the county of Morgan, in the State of Illinois, by a vote of its legally qualified voters, at an election held for the purpose, on the day of , A. D. 1856, voted to subscribe the sum of fifty thousand dollars
10 to the capital stock of the said Illinois River Railroad Company, payable in the bonds of said county, and that pursuant to the said vote the county court of said Morgan County did make said subscription; that on the 10th day of September, 1857, the county court of said county made an order which was entered of record, directing the preparation of one hundred bonds of $500 each to be prepared and issued in payment for said stock subscription, due and payable at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1877, and payable to the Illinois River Railroad Company, each of said 100 bonds having attached interest warrants or coupons, for the annual interest at 6 per cent. per annum, payable at like place on the said first day of March in each year; that pursuant to said order 100 bonds of $500 each were so prepared, signed by the proper officers of said county, and sealed with the seal of said county, and deposited with a custodian, for the benefit of said Illinois River Railroad Company, said Morgan County having duly received from said railroad company certificates of stock of said railroad company for the amount of said subscription and county bonds; that the interest on said bonds
11 began to run from the first day of March, A. D. 1858, and the said Morgan County paid the annual interest on each of such bonds for the years ending March 1, 1859, and March 1, 1860.

The complainants further state and charge that said bonds were not paid out nor disposed of by the said Illinois River Railroad Company prior to or at the time of its insolvency and dissolution as before stated; and that said bonds and interest warrants, except so far as they have been legally and properly paid out by direction of this court, are assets liable to be applied to, and should be applied to, the payment of the debts and liabilities of the said Illinois River Railroad Company.

The complainants further state and show that one Isaac Vail recovered a judgment in the circuit court of Mason County, in State of Illinois, against the said Illinois River Railroad Company for something

over five thousand dollars; and one Ladd, by the consideration of the circuit court of Peoria County, Illinois, recovered a judgment against said railroad company for about the sum of fifteen hundred dollars; that the said Isaac Vail and the said Ladd instituted proceedings in the circuit court of said Morgan County against the said Illinois River Railroad Company, Morgan County, and others, claiming the right to subject the bonds of said Morgan County before mentioned to the pay-
12 ment of the judgments, interest, and costs; and such proceedings were had in said case at the term, 1866, of said court, an order was entered in said case, directing the payment of the two said judgments, interests, and costs; that prior to the order aforesaid said Ladd had departed this life intestate, and one Dody had been appointed his administrator; that in the order aforesaid it was provided, by consent of the parties to said suit, that the said Morgan County might retire bonds at forty cents to the dollar in payment of said two judgments. The complainants state and charge that they were not made parties to said suit last above named, and are not bound by the proceedings in the same; that at the June term, 1866, of the county court of said Morgan County the order and decree of the Morgan circuit court aforesaid was spread upon the records of said county court of Morgan County; that at that time there was due for judgment, interest, and costs on the Ladd judgment the sum of $1,913.19, and on the judgment of Isaac Vail the sum of $5,094.91 for judgment, interest, and costs, making the aggregate sum of $7,008.10; that in the payment of said sum of $7,008.10 the county of Morgan got into her possession of said bonds thirty-four in number, being from number seven to number forty-two, inclusive, and which bonds, with the interest accrued from the 1st day of March, 1860, to June, 1866, being $6,137.50, and which, added to the sum total of said bonds, $17,500, amounted to the sum of
13 $23,639.50; that said bonds and coupons were burned, but that the county of Morgan only paid for the same the said sum of $7,008.10. The complainants charge that the coupons then due on said bonds were worth their par or face value, and the bonds with the coupons cut off, so far as matured, were then worth not less than seventy-five cents of their par value. Complainants further charge that the county of Morgan burned and destroyed of said bonds and coupons about $16,000 more in value of the assets of the said Illinois River Railroad Company than said Morgan County paid value for, and that the said county is only entitled in equity to credit on its subscription to the capital stock of said railroad company for sum, as the $7,008.10 cash paid was in fact worth the bonds and coupons at that time, and that the difference of about $6 000, with the interest at 6 per cent. per annum from that date, is equitable assets, liable to be, and which should be applied to the payment of the judgment belonging to complainants, as before described.

The complainants further state and show that James Blair, Aaron Addis, and others filed their bill in chancery in said circuit court of Morgan County, at the September term, 1867, against the county of Morgan and others, seeking to set up certain pretended judgments in favor of themselves and against the Illinois River Railroad Company said
14 pretended judgments; all of which will more fully & at large appear by reference to the record and proceedings in said case, with the interest and costs amounting to something over forty thousand dollars; that the complainants in said bill sought to have said remainder of said bonds, being in nominal value $32,500, with the interest warrants, applied to the payment of said pretended judgments; that at the

special November term, 1867, a decree was entered in said case of James Blair et al. v. Morgan County et al., ordering and decreeing and directing the application of said bonds and interest warrants to the payment of said pretended judgments: that at the same term of said court the special master in chancery appointed to execute said decree made his report, from which it appears that he had delivered all of said bonds remaining to the complainants in said suit, in full satisfaction of the claims of said parties. Complainants state and charge the fact to be that said suit was not in fact decided by the court, but that the decree and master's report was rendered and made pursuant to an agreement made between the county of Morgan and the complainants in the said suit, as follows:

Creditors' bill.

Special Nov. term, 1867.

STATE OF ILLINOIS,
Morgan Co.:

JAMES BLAIR ET AL.
15 *v.*
ILLINOIS RIVER RAILROAD CO. ET ALS.

It is agreed that all the Morgan County bonds received by complainants in the above-entitled suit may be redeemed by the payment to complainant' of $6,000 in Morgan Co. bonds & $6,000 in money, being $12,000 in all.

In the event that Morgan County may desire it, credit shall be given on the cash payment for a short time, not exceeding .

It is further stipulated that out of said Morgan Co. bonds and cash the claim of William Thomas, $4,000, shall be paid pro rata with the complainants.

HENRY E. DUMMER,
Sol'rs for Compl'ts.

Complainants state and charge that the thirty-two thousand and four hundred dollars in bonds mentioned in said suit of Blair et al. never were in fact delivered to complainants in said suit, nor to their solicitor, as is stated in the master's report made in said case; but the county of Morgan paid to Henry E. Dummer $6,000 in cash, and delivered to said
Dummer of said bonds bonds from number 43 to 54, inclusive,
16 being six thousand dollars of the same, the county detaching from said bonds last named the coupons maturing March 1, 1861, to March 1, 1866, inclusive, being for 6 years' interest, amounting to the sum of twenty-one hundred and sixty dollars, for which the county has paid nothing; that said bonds were delivered, with the interest warrants due March, 1867, and the same making the sum of $360, and being that sum more than the stipulated sum for the release of the said pretended judgments, and which payment of the said $360 the county had no right to make, and which was wholly unauthorized.

Complainants further state that they were not parties to the suit of James Blair et al. against Morgan County and others, and are not bound by the same; that the county of Morgan is only entitled to credit for the cash paid, being $6,000 on said subscription, and also a credit on the same for the bonds from November 43 to 54, both inclusive, and that said Morgan County is liable to and should account for all the in-

terest-warrants on said last-numbered bonds, as before stated, and also for the $360 of interest wrongfully paid or delivered to the said Dummer. Complainants state and charge that it was a part of the written stipulation made by the said Henry E. Dummer, before set forth, that out of said $6,000, and $6,000 in bonds, a certain claim of one Wil-
17 liam Thomas, for $4,000 of said bonds, should be paid in pro rata proportion with the claims of the complainants in said suit; but complainants charge that the fact is that neither said Dummer nor either of the complainants in said suit last named, ever paid any part of the money or bonds so received as aforesaid to the said Thomas, but the said William Thomas has prosecuted said claim against said county of Morgan, and obtained a decree against said fund for payment of his said claim, amounting, including interest, to the sum of $7,000, and complainants charge that the pro rata proportion of the $6,000 in bonds and $6,000 in cash properly applicable to the payment of the said claim or debt of the said William Thomas was, as complainants charge and believe, about the sum of $1,100; that the said Henry E. Dummer never paid any part of said bonds or money on said claim, as was his duty to do, and, as before stated, the said William Thomas has prosecuted his claim against said county of Morgan, and has obtained a decree in his favor for the $4,000 in bonds, with the interest on the sum for twelve or thirteen years, making about the sum of three thousand dollars, making the decree of the said Thomas something over $7,000, and the said county of Morgan is claiming that said sum of $7,000 in favor of the said Thomas shall be credited to them, said county, on the said subscription of $50,000.

18 Complainants state that they do not know whether the said Dummer has refunded the said $1,100 and the $360, one year's interest as aforesaid, to the county authorities or not, but they believe he has not, and they charge that he is liable to account for, and should account for the same to the creditors of said Illinois River Railroad Company, and that the county is liable for the same, as having paid out the same without any legal warrant or authority.

Complainants state and charge that the said county of Morgan has paid out the interest-warrants for the year from March 1, 1868, to March 1, 1869, on bonds from number 61 to 100, inclusive, and being $1,200, and the said interest-warrants have been paid, as they are informed and believe, but they charge and state that the same were not paid to any creditor of the said Illinois River Railroad Company, nor by its authority, but was paid out on other indebtedness of said Morgan County, and which was no a legal payment, nor is the same in any way binding upon the complainants in this suit, and said Morgan County is liable to account for the same; that said Morgan County cut off of said bonds numbered 61 to 100 the coupons due from 1861 to 1868, inclusive, in the month of March, 1869, and burned them, but that they were unpaid for by said county, nor were they surrendered by the said Illinois River Railroad Company, nor by any one having authority to do
19 so, and the complainants charge that said coupons have never been paid off, but that the same with interest are equitable assets in the hands of the county of Morgan liable to be applied to the payment of said indebtedness due to complainants from the Illinois River Railroad Company.

The complainants further show and state to your honor that all the county of Morgan has paid on said subscription of $50,000 and interest is the $7,008.10 paid on the judgments aforesaid, and the payment of $6,000 in cash, and the delivery of bonds numbered from 43 to 51, in-

clusive, and that all the remainder of the said lands and the interest are unpaid, and is liable to be applied to the payment of said indebtedness of said Morgan County, excepting, however, the interest-warrants on all of said bonds for the years ending March 1, 1859, and March 1, 1860, which were paid by said Morgan County to said Illinois River Railroad Company, and the interest-warrants on bond number 1 for the years ending March 1, 1861, and 1862, and the interest-warrants on bonds numbered 2, 3, 4, 5, 6, & 7 for the year 1861, due March first, which were applied on under an order of said Morgan County circuit court, rendered in the case of Elliott & Brown v. Morgan County et al., as before stated; and the complainants state and charge that if it be a fact, and of which they are ignorant, that the said Henry E. Dummer has refunded to or returned to the county of Morgan the said
20 $360 in interest, and that part of the $6,000 cash and $6,000 in bonds which he was to pay to the said William Thomas on the claim the said Thomas has prosecuted, to decree as before mentioned, these complainants state and charge that said sum is liable as assets in the hands of said county to be applied to the payment of the indebtedness due from said Illinois River Railroad Company to complainants.

The complainants state and show that at the sale of the railroad franchise and other property, conveyed in said trust deed, they purchased all of the same, and afterwards, in the year 1864, there was organized a railroad corporation pursuant to a charter granted by the legislature of the State of Illinois in the year 1863, under the name of Peoria, Pekin and Jacksonville Railroad Company, and that said Peoria, Pekin and Jacksonville Railroad Company afterwards, in the month of May, A. D. 1864, purchased of the complainants, and the complainants, by a good and sufficient deed of conveyance of that date, conveyed to said last named railroad company all and singular the property acquired by them under and by virtue of the deed made to them under the sale and decree of the United States circuit court, with such additions to said property as had been made by said complainants, but without
21 in any manner releasing, satisfying or conveying their interest in the judgment rendered by said United States court in favor of Alexander Studwell et al. as trustees and against said Illinois River Railroad Company, or without releasing or satisfying in any way the balance due on said decree in the foreclosure suit in said United States court; that said Peoria, Pekin and Jacksonville Railroad Company did, on or about the 1st day of July, A. D. 1869, complete the construction of the railroad from Virginia in Cass County to Jacksonville, in Morgan County, which was originally undertaken to be built by the Illinois River Railroad Company aforesaid, and that thereupon twenty thousand dollars of said Morgan County bonds, and numbered from 61 to 100 inclusive, with the coupons thereon due for the year ending March 1st, 1869 and thereafter, have delivered to said Peoria, Pekin and Jacksonville Railroad Company by said Morgan County through one Isaac L. Morrison, who claimed to be the custodian of the same for that purpose, of which said $20,000 in said bonds, twenty bonds for the sum of five hundred dollars each and numbered from 81 to 100 inclusive with the aforesaid company thereunto attached were paid and delivered to said Isaac L. Mor-
22 rison by the Peoria, Pekin and Jacksonville Railroad Company.

The complainants state and charge that after said Morrison delivered said bonds to the Peoria, Pekin and Jacksonville Railroad Company the said Morgan County repudiated said delivery and brought suit in the said Morgan County circuit court against said Peoria, Pekin and Jacksonville Railroad Company et al. and recently obtained a decree in

said court wherein said Peoria, Pekin and Jacksonville Railroad Company and said Morrison were ordered to redeliver said bonds so delivered by said Morrison to the custody of the county of said Morgan, and the complainants aver and charge that said Morgan County had no right or authority to deliver said last mentioned bonds, so delivered by said Morrison to the Peoria, Pekin and Jacksonville Railroad Company, and that they are liable to and should be applied on the said indebtedness due the complainants. Complainants further state and charge that said Illinois River Railroad Company has been dissolved and has no officers or agents on whom service of process can be made in their case: that the said judgment of the United States circuit court for $1,061,292.56, with six per cent. interest per annum from the date of same, is
23 wholly due and unpaid and unreversed; that an execution was duly issued on the same in due and proper time and the same was duly returned by the marshal of said district, no property found, there being no property upon which to levy, and that the said Illinois River Railroad Company is insolvent.

Complainants further charge that as against them none of the bonds or interest warrants, before mentioned, were paid except as before particularly mentioned, and that the same are liable to be and should be applied through this honorable court to the payment of this the indebtedness of complainants, and the complainants charge that the parts of said fund in the hands of Henry E. Dummer, Isaac L. Morrison and the Peoria, Pekin and Jacksonville Railroad Company, should be so applied also.

The premises considered, your orators pray that the county of Morgan, (in the State of Illinois,) Henry E. Dummer, the Peoria, Pekin and Jacksonville Railroad Company and Isaac L. Morrison be made defendants to this bill; that a subpœna in chancery issue for said defendants to the proper officer of this court commanding, &c., returnable, &c., and that the said defendants be required to answer all and singu-
24 lar the allegations of this bill fully, truly, and explicitly as if specially interrogated in reference to the matters herein contained, but not on oath, which is hereby waived under the statute; and complainants further pray that upon a hearing of this case the court will enter a decree requiring the county of Morgan to pay to the complainants the interest warrants due and unpaid as in this bill is stated, or in lieu thereof to pay to the complainants the money due on the same and that the same be applied as a payment on the indebtedness of the Illinois River Railroad Company, before specified, and that the Morgan County bonds, before mentioned, except the $6,000 paid to Henry E. Dummer in bonds, under the decree in the case of James Blair et al. and such of the $17,500 in bonds delivered to said county in June, 1866, as was not absorbed by the payment of the two judgments in favor of Ladd and of Vail, after applying the interest warrants at par, be sold under decree and that the proceeds be applied upon the payment of said judgment recovered by these complainants and for such other and further relief as to equity may seem proper and just; and that if it appears on the hearing
25 that the defendants, the Peoria, Pekin and Jacksonville Railroad Company and Isaac L. Morrison have not delivered to the custody of said Morgan County the bonds and interest warrants which they were ordered to deliver under said decree of the Morgan County circuit court aforesaid, and if said Henry E. Dummer has not paid one to said Morgan County the portion of the funds he agreed to pay to said William Thomas and also the $360 interest warrants the complainants pray that they may be compelled to account for the same, and that the same may be applied

by this court to the payment of the indebtedness due the complainants from the said Illinois River Railroad Company.

JOHN ALLEN.
AARON ARNOLD.
EDWIN L. TROWBRIDGE.
By DEARBORN & CAMPBELL,
Sol'rs for Comp'ts.

(Endorsed:) Filed January 2d, 1874. J. A. Jones, Clerk.

26 *Exhibit A to bill.*

Pleas in the circuit court of the United States for the southern district of Illinois, in chancery, held in the city of Springfield, in said district, before the Hon David Davis, one of the justices of the Supreme Court of the United States of America, presiding, and Samuel H. Treat, district judge of said district, associate judge, on Tuesday, the sixteenth day of June, in the year of our Lord one thousand eight hundred and sixty-three, and of our Independence the eighty-seventh year.

(Signed) P. P. ENOS, *Clerk.*

ALEXANDER STUDWELL, LUCIUS HOPKINS, and GEORGE T. COBB
vs.
THE ILLINOIS RIVER RAILROAD COMPANY, Isaac Vail, John Wear, and Leonard H. Wilkey. } In chancery.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Alexander Studwell and Lucius Hopkins, who are citizens of the State of New York, and George T. Cobb, who is a citizen of the State of New Jersey, complainants, put in their place Messrs. Logan, Hay & Cullum, their solicitors, against the Illinois River Railroad Company, a
27 corporation doing business in the southern district of Illinois, and Isaac Vail, John Wear, and Leonard H. Wilkey, defendants.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the seventeenth day of December, in the year of our Lord one thousand eight hundred and sixty-two, came the said complainants by their solicitors, and filed in the office of the clerk of the circuit court of the United States for the southern district of Illinois, their bill to foreclose mortgage against said defendants, and praying the issue of a writ of subpœna against the said defendants directed to the marshal of the southern district of Illinois to execute, and also at the same time filed their bond for costs; which said bond for costs and bill are in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Southern District of Illinois:

Circuit court, January term, A. D. 1863.

ALEXANDER STUDWELL, LUCIUS HOPKINS, AND Geo. T. COBB
vs.
28 THE ILLINOIS RIVER RAILROAD COMPANY, Isaac Vail, John Wear, and Leonard H. Wilkey. } Bill.

We do hereby enter ourselves security for costs in this cause and ac-

knowledge ourselves bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States. Dated this 17th day of December, 1862.

HAY & CULLOM.

(Indorsed:) Filed Dec. 17, A. D. 1862. P. P. Enos, clerk.

In the circuit court of the United States for the southern district of Illinois. In equity.

To the judges of the circuit court of the United States for the southern district of Illinois, sitting in equity:

Alexander Studwell, a citizen of the State of New York, and a resident of the city of Brooklyn, in that State; Lucius Hopkins, a citizen of the State of New York, and a resident of the city of New York, in that State; George T. Cobb, a citizen of the State of New Jersey, and a resident of Morristown, in that State, bring this their bill against the Illinois River Railroad Company, a railroad corporation created by certain legislative acts of the State of Illinois, domciled in and a citizen of the State of Illinois, and located and having its principal place of business within said southern district of said State, and against Isaac Vail, Joan Wear, & Leonard H. Wilkey.

And thereupon your orators complain and say, that on the eleventh day of February, A. D. 1853, the general assembly of the State of Illinois, by an act approved by the governor of that State on that day, entitled "An act to construct a railroad from Jacksonville, Morgan County, to La Salle, in La Salle County," duly created a body corporate and politic under and by the name and style of the Illinois River Railroad Company, the defendant above named, and thereby authorized and empowered said railroad corporation to locate, construct, and complete a railroad from Jacksonville, in the county of Morgan, to La Salle, in La Salle County, and to run and operate the same; and to which
30 said act and to all the provisions thereof, or to a duly exemplified copy thereof when produced and proven, your orators crave leave to refer for greater certainty.

And your orators further say, that on or about the first day of March, A. D. 1854, the said general assembly passed an act (approved by said governor on that day) entitled "An act to amend an act entitled 'An act to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County,'" and that on or about the twenty ninth day of January, A. D. 1857, the said general assembly passed an act (approved by said governor on that day) entitled "An act to amend the charter of the Illinois River Railroad Company," and that on or about the sixteenth day of February, A. D. 1857, the said general assembly passed an act (approved by said governor on that day) entitled "An act to amend an act entitled 'An act to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County,'" approved February 11th, 1853, and also to amend an act entitled "An act to amend an act entitled 'An act to construct a railroad from Jackson-
31 ville, in Morgan County, to La Salle, in La Salle County,'" and to which several amendatory acts above specified and to all the provisions thereof, or to duly exemplified copies thereof when produced and proven, your orators crave leave to refer for greater certainty.

And your orators further say that said railroad corporation was duly organized under and in conformity to the provisions and requirements

of the acts aforesaid relating thereto, and commenced the construction and building of its railroad within the time in that behalf specified in its charter, and that said railroad corporation was authorized thereby to build and operate a part of its railroad notwithstanding its whole line should not be finished and completed, and that they are advised by counsel and believe and charge that said railroad corporation in and by the aforesaid acts was expressly authorized and empowered from time to time to borrow such sums of money as might be necessary for completing and finishing or operating its railroad, and to issue its bonds in sums not less than five hundred dollars for the purpose last aforesaid,
32 bearing an interest not exceeding ten per cent. per annum, and to sell the same at par or on such other terms as said railroad corporation might agree on, and the sales of all such bonds at rates less than their par value were, in and by said acts, declared to be as good, valid, and binding upon said railroad corporation as if made for the full amount thereof, and that said railroad corporation in and by the aforesaid acts was expressly authorized and empowered to mortgage its corporate property and franchises and to convey the same by deed of trust for the purpose of securing the payment of its bonds or any debt contracted by said railroad corporation for the purpose of completing, finishing, or operating its said railroad.

And your orators further say that on or about the first day of November, A. D. 1858, for the purpose of completing said railroad and furnishing the iron rail, chairs, and spikes therefor and for the purposes and objects expressly authorized by the acts aforesaid, it became and was necessary for said railroad corporation to borrow about the sum of one million and twenty thousand dollars; and thereupon a resolution was adopted by the said railroad corporation, to wit, by its board of directors
at a meeting of said board duly convened, whereby it was resolved
33 and determined by said railroad corporation that it would borrow the said sum of one million and twenty thousand dollars for the purposes and objects specified in and authorized by the aforesaid acts, and for such authorized purposes and objects would execute, issue, and sell its thirteen hundred and twenty bonds of the tenor and effect and containing the provisions and agreements hereinafter set forth for said aggregate sum of one million and twenty thousand dollars, to be dated on the first day of November, A. D. 1858, and to bear interest at the rate of ten per centum per annum, the principal of said bonds to be payable on the first day of January, A. D. 1880, with interest thereon from and after the thirtieth day of June, A. D. 1859, payable semi-annually on the first days of January and July in each and every year after said last-mentioned day; and also that as collateral security for the payment of said thirteen hundred and twenty bonds, to wit, of the sums of money therein specified, amounting to the sum of one million and twenty thousand dollars, said railroad corporation would execute under its
common seal and deliver unto your orators as trustees a mortgage
34 or deed of trust of all its corporate property, real and personal, franchises and effects, containing the conditions, covenants and provisions, and of the tenor and effect hereinafter set forth and described.

And your orators further say that after the adoption of the said resolution, and in pursuance thereof, and by virtue and in pursuance of lawful authority, said railroad corporation did cause to be executed under its corporate seal and signed by its president and attested by its secretary thirteen hundred and twenty bonds, each bearing date the first day of November, in the year one thousand eight hundred and fifty-eight,

and severally payable to George S. M. Davis, or bearer, at the Importers and Traders' Bank in the city of New York, and that in and by each and every of seven hundred and twenty of the said thirteen hundred and twenty bonds the said railroad corporation acknowledged itself indetebted and bound to George S. M. Davis, or bearer, in the sum of one thousand dollars lawful money of the United States of America, and which said sum of one thousand dollars the said railroad corporation in and by each and every of said seven hundred and twenty bond' promised to pay at the Importers and Traders' Bank in the city of New
35 York to the said George S. M. Davis, or bearer, on the first day of January, A. D. 1880; and that in and by each and every of the residue of the said thirteen hundred and twenty bonds, that is to say, in and by each and every of six hundred of the said thirteen hundred and twenty bonds, the said railroad corporation acknowledged itself indebted and bound unto George S. M. Davis, or bearer, in the sum of five hundred dollars lawful money of the United States of America, and which said sum of five hundred dollars said railroad corporation in and by each and every of the said six hundred bonds promised to pay at the Importers and Traders' Bank in the city of New York to George S. M. Davis, or bearer, on the first day of January, A. D. 1880, and that the said sums of money specified in the said thirteen hundred and twenty bonds amount in the aggregate to the sum of one million and twenty thousand dollars lawful money of the United States of America, and that in and by each and every of the aforesaid thirteen hundred and twenty bonds the said railroad company promised in substance and legal effect to pay interest on the sum of money therein mentioned, to be computed from the
36 thirtieth day of June, A. D. 1859, at the rate of ten per centum per annum, to be paid at said Importers and Traders' Bank on the first days of January and July in each and every year after the said thirtieth day of June, A. D. 1859, on the presentation and surrender of the dividend or interest warrants annexed to said bonds respectively.

And your orators further say that in and by each and every of the aforesaid thirteen hundred and twenty bonds the said railroad corporation expressly agreed with the several holders of the same that in case said railroad corporation should for the space of thirty days make default in the payment of the semi-annual interest due or to become due on any or either of the said thirteen hundred and twenty bonds, then and in such case, after the lapse of the said thirty days, the whole principal sum mentioned in each and all of said thirteen hundred and twenty bonds should immediately thereafter become due and payable, anything in said bonds contained to the contrary notwithstanding.

And your orators further say that the aforesaid thirteen hundred and twenty bonds, except as to the numbers and amounts thereof re-
37 spectively, were and are, and each of them was and is in the words and figures following, that is to say:

No. .] [$.

UNITED STATES OF AMERICA, STATE OF ILLINOIS.

Illinois River Railroad Company. Incorporated February 11th, A. D. 1853.

First mortgage bond, secured by the entire net earnings of the railroad as a sinking fund.

Know all men by these presents, that the Illinois River Railroad Com-

pany, a body corporate, created by and domiciled in the State of Illinois, hereby acknowledge itself indebted and bound to George S. M. Davis or bearer in the sum of dollars, lawful money of the United States of America, which sum the Illinois River Railroad Company hereby promises to pay at the Importers and Traders' Bank, in the city of New York, to the said George S. M. Davis or bearer, on the first day of January, A. D. 1880, with interest from and after June 30th, 1859, at the rate of ten per centum per annum, payable semi-annually at said Importers and Traders' Bank, in said city of New York, on the first days of January and July in each year, after June 30th, 1859, on presentation and surrender of the annexed dividend or interest warrants.

This bond is one of a series of seven hundred and twenty bonds
38 for dollars, each numbered from one to seven hundred and twenty, both inclusive, and of six hundred bonds for five hundred dollars, numbered from seven hundred and twenty one to thirteen hundred and twenty, both inclusive, and amounting in the aggregate to one million and twenty thousand dollars, and which have been made and executed by said Illinois River Railroad Company under express authority granted by several acts of the general assembly of the State of Illinois, and for the purposes authorized by and specified in said acts.

And as security for the payment to the holders of said issue of said thirteen hundred and twenty bonds, with interest to grow due thereon, the said Illinois River Railroad Company has duly executed, acknowledged, and delivered, under the authority of said special acts and resolutions unanimously passed and adopted by its board of directors, to Lucius Hopkins, George T. Cobb, and Alexander Studwell, as trustees, a mortgage or deed of trust bearing even date herewith and whereby, all the real and personal property, rolling stock, franchises, and effects now owned or acquired, or hereafter to be owned or acquired by it, are mortgaged and conveyed to said trustees and the survivors of them, as by reference to said mortgage or deed of trust or the record
39 thereof will more fully appear, and to which and to all the terms and provisions thereof reference is hereby specially made.

And as a further security for the payment to the holders of said issue of said thirteen hundred and twenty bonds, with the interest thereon to grow due, the said Illinois River Railroad Company has, in the manner and upon the terms and conditions specified in said mortgage or deed of trust, irrevocable pledged the entire net income of its railroads for the payment of the interest due or to grow due upon said bonds and for the creation and maintenance of a sinking fund to be applied to the payment and redemption of all said bonds, both principal and interest, in the mode and manner specified in said mortgage or deed of trust, and to which reference is hereby specially made as a part hereof.

And it is expressly agreed by and between said Illinois River Railroad Company and the several holders of the said thirteen hundred and twenty bonds that the same are issued or negotiated and are held and are to be held subject to redemption by lot or otherwise out of said sinking fund at any time before January 1st, A. D. 1880, in the man-
40 ner specified in said mortgage or deed of trust, and the same are made, executed, or issued and held expressly subject to their payment and redemption before the maturity thereof out of said sinking fund.

And it is hereby further expressly agreed by and between said Illinois River Railroad Company and the several holders of said thirteen hundred and twenty bonds, that in case said Illinois River Railroad Com-

pany shall for the space of thirty days make default in the payment of the semi-annual interest due or to become due on any or either of said bonds, or in case it shall fail to pay over to said sinking fund, as provided in said mortgage or deed of trust, the entire net earnings of its railroad, then and in either of said cases, after the lapse of said thirty days, the whole principal sum mentioned in each and all of said bonds shall immediately thereafter become due and payable, everything herein contained to the contrary thereof notwithstanding; and in case default shall be made either in the payment of said semi annual interest as aforesaid, or in payment of said net earnings to said sinking fund as aforesaid, then and in either of said cases, said trustees are bound and obligated by the very terms of said mortgage or deed of trust, after the lapse
41 of thirty days as aforesaid, at the request of two or more holders of said bonds, to foreclose said mortgage or deed of trust, and out of the proceeds of the sale of the mortgaged premises to pay all said thirteen hundred and twenty bonds, principal and interest.

In witness whereof the said Illinois River Railroad Company has caused this bond to be signed by its president and attested by its secretary, and its corporate seal to be hereunto affixed, at its office in the city of Pekin, in the county of Tazewell, and State of Illinois, under the express authority of resolutions of its board of directors, this first day of November, in the year of our Lord one thousand eight hundred and fifty-eight.

Secretary.

President.

And your orators further say that at the time of making and executing the aforesaid thirteen hundred and twenty bonds, and concurrently therewith, the said railroad corporation made and annexed to each of said thirteen hundred and twenty bonds interest warrants commonly called coupons, for the payment of the semi-annual interest to become due on said bonds respectively according to the tenor and effect thereof,
42 and which said interest warrants formed a part of said bonds respectively, and the same are, except as to numbers, time of payment, and amount of each coupon, in the words and figures following, that is to say:

ILLINOIS RIVER RAILROAD COMPANY.

Interest warrant for dollars, payable at the Importers and Traders' Bank of the City of New York, on the first day of , 18 , for six months interest on bond No. for $.

For and on behalf of the company.

M. H. L. SCHOOLEY, *Sec'y.*

And your orators further say, that for the purpose of the better securing of the payment of the sums of money specified in the said thirteen hundred and twenty bond' and the interest to accrue thereon according to the tenor and effect of the said bonds, and after the adoption of the aforesaid resolution of the board of directors of said railroad corporation, and also in pursuance of the power and authority conferred by the aforesaid acts, said railroad corporation did, at the time of the execution of the aforesaid thirteen hundred and twenty bonds, make and duly execute under its common seal a mortgage or deed of

43 trust bearing date the first day of November, in the year of our Lord one thousand eight hundred and fifty-eight, and did thereupon deliver said mortgage or deed of trust unto your orators, wherein & whereby the said railroad corporation did grant, bargain, sell, enfeoff, convey, and set over unto your orators, as trustees, the premises, corporate property, real and personal, to the income, profits, franchises, and effects therein described and specified or referred to, and then acquired, and thereafter to be acquired, by said railroad corporation upon the trusts and for the uses and purposes, and with the covenants, agreements, provisos, and stipulations, and upon the conditions therein expressly declared and set forth; and that thereupon your orators severally became parties to the said mortgage or deed of trust and executed the same under their respective hands and seals, and that thereupon the execution of the said mortgage or deed of trust by said railroad corporation, under its corporate seal, and the execution thereof by the president and secretary of the said railroad corporation was duly acknowledged and proved by its president and secretary before an officer authorized by the laws of the State of Illinois to take such proof and acknowledgment and in such manner and form as to entitle the said mort-
44 gage or deed of trust to be recorded as herein mentioned, and that thereupon a certificate of such proof and acknowledgment of the execution of said mortgage or deed of trust by said railroad corporation under its corporate seal, and by its president and secretary, was duly endorsed upon said mortgage or deed of trust by said officer and in the manner and form required by the laws of the State of Illinois, to entitle said mortgage or deed of trust to be recorded as hereinafter mentioned; and that thereupon the execution of said mortgage or deed of trust by your orators was duly acknowledged by them respectively, and proved before a certain other officer authorized by the laws of the State of Illinois, to take such proof and acknowledgment, and in such manner and form as to entitle the said mortgage or deed of trust to be recorded as hereinafter mentioned; and that thereupon a certificate of such acknowledgment and proof of the execution of said mortgage or deed of trust by your orators was duly endorsed upon said mortgage or deed of trust by said last mentioned officer, and in manner and form required by the laws of the State of Illinois to entitle said mortgage or deed
45 of trust to be recorded as hereinafter mentioned.

And your orators further say, that the said mortgage or deed of trust, together with the aforesaid certificates thereon endorsed of the acknowledgments and proof of the execution thereof, was and is in the words and figures following, to wit:

This indenture made this first day of November in the year of our Lord one thousand eight hundred and fifty-eight, between the Illinois River Railroad Company, a body corporate, created by and under certain special acts of the general assembly of the State of Illinois, party of the first part, and Alexander Studwell, Lucius Hopkins, and George T. Cobb, all residing or doing business in the city and State of New York, parties of the second part, witnesseth:

Whereas the said party of the first part is expressly authorized and empowered in and by its charter and other special acts of said general assembly amendatory thereof or supplementary thereto to borrow money for the objects and purposes therein specified; and for such authorized objects and purposes said party of the first part is desirous of borrowing a sum not exceeding one million and twenty thousand dollars, and of securing the payment of its corporate bonds or obligations is-

46 sued or negotiated therefor by a mortgage or deed of trust to said parties of the second part, as trustees, as hereinafter set forth and provided. And whereas, under and pursuant to lawful authority conferred by said charter and special acts aforesaid, the board of directors of said party of the first part have unanimously resolved in substance and legal effect, every member of said board being present, that said Illinois River Railroad Company make, execute, issue, negotiate, and deliver under its corporate seal its corporate bonds bearing even date herewith severally payable to George S. M. Davis or bearer at the Importers and Traders' Bank in the city of New York on the first day of January, A. D. 1880, with interest from and after June 30th, 1859, at the rate of ten per centum per annum, payable at the same bank semi-annually, as follows; that is to say, that 720 of said bonds be made or issued for the sum of $1,000 each, and that 600 of said bonds be made or issued for $500 each, in all 1,320 bonds in the aggregate, amounting to $1,020,000, and no more, and that for the purpose of a more specific identification thereof, the said 1,320 bonds be numbered in a consecutive series from number one to thirteen hundred and twenty, both in-
47 clusive, and that upon the face of each bond shall be printed or engraved a certificate signed by two or all of the parties of the second part hereto, to the effect that such bond is one of the 1,320 bonds intended to be secured by these presents.

And whereas, said board of directors have further unanimously resolved under and pursuant to lawful authority conferred upon said party of the first part, by its charter and special acts aforesaid, in substance and legal effect, that the president and secretary of said party of the first part execute and acknowledge in its name and on its behalf, and under its corporate seal deliver to said parties of the second part hereto, a mortgage or deed of trust, conveying, assigning, and transferring to them in trust all its corporate, real and personal property, franchises and effects as security for the payment of said 1,320 bonds and the interest due, and to grow due thereon, and that such mortgage or deed of trust should contain all and singular the covenants, provisos, and conditions hereinafter set forth, and that such mortgage or deed of trust and the 1,320 bonds thereby secured be severally dated November 1st, A. D. 1858. And whereas said 1,320 bonds contain express agreements, stipulations, or provisions in substance and legal effect as follows: in case said
48 party of the first part hereto shall for the space of thirty days make default in the payment of the semi-annual interest due, or to become due upon any or either of said 1,320 bonds, or in case said party of the first part shall fail, as hereinafter provided and covenanted, to create and maintain a sinking fund to be applied in payment of said 1,320 bonds, and the interest due or to grow due thereon as hereinafter mentioned, that then and in either of said cases after the lapse of thirty days the whole principal sum of each and all said 1,320 bonds shall immediately become due and payable, anything in said bonds to the contrary notwithstanding.

Now, therefore, this indenture witnesseth that the said Illinois River Railroad Company, the party of the first part hereto, under, pursuant to and by virtue of the express powers and authority conferred upon and vested in it by its charter and said special acts aforesaid, and under and pursuant to resolutions duly passed and adopted by its board of directors and which are duly entered upon the official minutes of the said board, and for and in consideration of the foregoing premises,
49 and especially for the purpose and with the intent of the better

and more effectually securing the payment of said 1,320 bonds with the interest due and to grow due thereon, and for and in consideration of one dollar and other moneys lawful money of the United States of America by said parties of the second part hereto in hand fully and truly paid to the said party of the first part hereto before the ensealing and delivery of these presents, the receipts thereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred and set over enfeoffed, conveyed, and confirmed, and by these presents doth grant, bargain, sell, assign, transfer & set over, enfeoff, convey, & confirm to the said Alexander Studwell, Lucius Hopkins, and George T. Cobb, the said parties of the second part, as trustees, and in trust & to the survivors & survivor of them, & to their and his successors or successor, all & singular, the railroad of said party of the first part hereto, constructed or hereafter to be constructed from the town of Jacksonville, in Morgan County, Ill's, to the junction with the Peoria and Hannibal Railroad in Peoria County, Ill's and all future extensions of said railroad as now authorized by the charter and special acts aforesaid, together with all its lands, tenements, and hereditaments acquired and appropri-
50 ated or which shall hereafter be acquired and appropriated for the purpose of a right of way for a single or a double track railroad, and also the appurtenances thereunto belonging; and also all its lands acquired and appropriated, or which shall hereafter be acquired and appropriated, for depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, workshops, superstructures, erections, and fixtures, and also all and singular the franchises, rights, and privileges now owned, possessed, or acquired, or which shall hereafter be owned, possessed, or acquired, by said party of the first part; and also all the rails, bridges, ways, piers, depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, workshops, erections, superstructures, fixtures, privileges, franchises, and rights of said party of the first part, and all the lands, tenements, hereditaments, and real estate acquired and appropriated, wheresoever and whatsoever, or now owned by said party of the first part or which shall hereafter be owned by it; and also all and singular the locomotives, tenders, passenger cars, freight cars, and all other cars, carriages, tools, machinery, and equipment for said railroad and now owned or which shall hereafter be owned or acquired by said party of the first part; and also all
51 goods and chattels now owned or which shall hereafter be owned by said party of the first part and in any way relating or appertaining or belonging to or connected with said railroad or the running or operating the same, together with all rents, issues, income, profits, moneys, rights, benefits, and advantages derived, or to be derived, had or received therefrom by said party of the first part in any way whatsoever.

To have and to hold, all and singular, the premises, rights, franchises, property, real and personal, hereinbefore and hereby assigned, mortgaged, pledged, and conveyed, or intended so to be, and every part and parcel thereof, with all the appurtenances unto the same belonging or or in any wise appertaining unto them, the said Alexander Studwell, Lucius Hopkins, and George T. Cobb, the said parties of the second part hereto, and to the survivors and survivor of them, and to their and his successors and successor and their and his assigns, in trust for the person or persons, firm or firms, bodies politic, corporate who have heretofore, or who shall hereafter at any time become the purchasers or holders or owners of any or either of said 1,320 bonds, amounting in the aggregate to $1,020,000, and no more, subject to the terms, provisos,

and stipulations in said 1,320 bonds contained, and subject also
52 to the provisions of the several acts of the said general assembly of the State of Illinois affecting or relating to or binding upon the said party of the first part: and also subject to the possession and management of said railroad and property by said party of the first part and its successors or assigns so long as no default shall be made in the payment of either the interest or principal of said 1,320 bonds, or any or either of them, and so long as the said party of the first part shall well and truly observe, keep, and perform, all and singular, the covenants, agreements, conditions, and stipulations in said 1,320 bonds and in this indenture contained and set forth and which are to be observed, kept, and performed by and on the part of said party of the first part.

And the said Illinois River Railroad Company, the party of the first part, hath covenanted and agreed, and, by these presents, doth for itself, its successors and assigns, covenant and agree to and with the said parties of the second part hereto, and the survivors and survivor of them, and their and his successors or successor in manner and form following, that is to say:

53 First. That said Illinois River Railroad Company, the party of the first part, and its successors shall and will pay or cause to be paid all taxes, charges, rates, levies, and assessments, imposed, assessed or levied, or which may hereafter be imposed, assessed or levied, upon the premises, franchises, and property hereby mortgaged, conveyed, and assigned or intended so to be; and shall and will, at its own proper cost, expense and charges, do or cause to be done all acts and things necessary or proper to be done or performed in order to preserve and keep valid and intact the lien or incumbrance upon all and singular the aforesaid premises, property and franchises hereby created or intended so to be; and further that the lien or encumbrances created by the execution and delivery of this indenture constitutes and is in fact the first valid lien and incumbrance upon the premises, property, and franchises therein described; and further that said Illinois River Railroad Company and its successors shall not and will not at any time hereafter take or in any way or manner use, interpose, or avail itself of any extension laws, stop laws, valuation laws, appraisement laws
54 or any other laws of said State of Illinois now in force, or hereafter to be enacted and in force in said State, and which alter, affect, or impair, or which are designed, intended or construed to alter, affect or change the rights and interests of said parties of the second part as herein declared, or which shall in any way impede or obstruct the mode or manner of realizing, perfecting or enforcing the rights and interests of any of the holders or owners of said 1,320 bonds as herein provided, or which shall affect, change or alter the time, place, mode, means, or manner of perfecting, enjoying or enforcing and of such rights or interests as the same are herein declared.

Secondly. That said Illinois River Railroad Company, the party of the first part, and its successors, shall and will at any time or times hereafter, and from time to time, execute, acknowledge, and deliver under its corporate seal to the said parties of the second part, and the survivors and survivor of them, and their and his successors or successor, all such further and other assurances, deeds, mortgages, obligations, transfers, indentures, and instruments in writing, and shall and
55 will do and perform all such further or other acts or things as shall be proper or necessary, or as their or his counsel learned in the law shall deem necessary, proper or expedient for the better or more

effectually securing the payment of said 1,320 bonds and the interest due or to grow due thereon, or for carrying into effect the true intent, design, object and purposes of these presents, or making, preserving, continuing, and keeping valid and effectual the lien and incumbrance created or intended to be created by the execution, delivery, and recording of this indenture upon all the property, real and personal, rolling stock, equipment, franchises, and effects now owned, possessed or acquired, or which shall hereafter be owned, possessed or acquired, by said party of the first part.

Thirdly. And for the purpose of further and more effectually securing the payment of said 1,320 bonds, together with interest due, or to grow due thereon, that said Illinois River Railroad Company, the party of the first part hereto, and its successors, shall and will pay or cause to be paid as hereinafter mentioned to the said Importers and Traders' Bank in said city of New York to the credit of its "permanent treas-
56 urer" in said city, the entire net earnings and receipts of its said railroad at the time, in the manner, for the purposes, and as provided in and by a certain agreement or running arrangement made by said party of the first part hereto with the Chicago and Rock Island Railroad Company, bearing date on or about the 27th day of September, A. D. 1858, and that said agreement or running arrangement so made as last aforesaid, while and so long as any of said 1,320 bonds are outstanding, or unredeemed, or unpaid, shall not be annulled or abrogated, nor altered, changed, in any manner modified so as to diminish or otherwise to divert or effect the payment of said net earnings and receipts to said Importers and Traders' Bank to the credit of said "permanent treasurer," as now provided therein, unless the consent in writing thereto of said parties of the second part hereto, or of the survivors or survivor of them, or their or his successors or successor, shall be first had and obtained.

And, further, that said Illinois River Railroad Company, the party of the first part hereto, and its successors, shall and will create and
57 maintain with and out of the net earnings and receipts of it' railroad so to be paid over to said Importers' and Traders' Bank, to the credit of its permanent treasurer, in the city of New York, two funds; one to be denominated a depreciation fund, and the other a sinking fund; that ten per cent. of said annual net earnings and receipts shall be annually set apart and held by said permanent treasurer as and for said depreciation fund, to be used and applied by him in keeping the rails and ties of said railroad in constant and safe working order, and also in meeting any extraordinary outlay in repairs of the tracks, bridges, and trestle-works connected with or belonging to said railroad and which may have been occasioned by unforeseen accidents or casualties; and that the first payment or appropriation towards the creation of said depreciation fund shall be made on the first day of January, A. D. 1860, and that the entire residue of said earnings and receipts so to be paid over to said Importers' and Traders' Bank shall be set apart and held by the said permanent treasurer for the special purposes following, namely:

First. That said permanent treasurer shall semi-annually ap-
58 ply so much and such part thereof as shall be necessary to meet and pay the semi-annual interest due, or which hereafter shall become due, on each and all of said 1,320 first-mortgage bonds, and which shall or may be necessary to meet and pay the semi-annual interest which shall hereafter accrue on an issue of second-mortgage bonds by the said party of the first part; provided, however, that only so

much of said net earnings and receipts shall be used and applied in payment of interest on mortgage bonds as last aforesaid as shall be necessary to pay the interest which shall accrue upon said first and second mortgage bonds, amounting togethe rand in the aggregate at no one time to more than $1,300,000.

Secondly. That the entire residue and remainder of said earning and receipts, so to be paid over to said Importers' and Traders' Bank to the credit of said permanent tresurer, shall be by him set apart as and for said sinking fund, and shall be held by him subject to the order of and to be used and applied (together with all other moneys which shall hereafter be had or appropriated from any source by said party of the
59 first part to the same fund) by the said parties of the second part hereto, or the survivors or survivor of them, or his or their successors or successor, in the payment or redemption at par or under par of so many of said 1,320 bonds as such sinking fund shall from time to time be sufficient or adequate to pay and redeem.

It being understood and agreed between the parties hereto that in case the holders of said 1,320 bonds shall refuse to surrender for cancellation such an amount thereof as shall be sufficient to exhaust and keep exhausted from time to time said sinking fund, then and in such case it shall be the imperative duty of said party of the second part and the survivor and survivors of them, theirs and his successors and successor, annually from and after the first day of January, A. D. 1861, at said Importers' and Traders' Bank, in the city of New York, to determine by lot in a fair and impartial manner which of said bonds shall be subject to payment and redemption at par out of said sinking fund in manner following, that is to say, the numbers upon all the then outstanding and unpaid first mortgage bonds shall be placed in a box,
60 each number on a single slip of paper, and so many and only so many of said slips of paper shall then be drawn by one of the parties of the second part hereto from said box as shall be sufficient in the amount of the bonds represents by the numbers on such slips to exhaust the said sinking fund, and the holders of the bonds corresponding in the numbers thereon with the numbers on the slips so drawn shall be compelled to receive payment of the principal thereof and any interest which may be then due thereon out of said sinking fund, and to surrender them with the coupons thereon, thereafter to become due, to said parties of the second part for cancellation; and the same shall be immediately so cancelled and mutilated as to render it impossible for any of such redeemed bonds or the coupons or interests warrants thereon to be used or in any manner put in circulation for any purpose whatever; and it is hereby declared that all bonds so drawn and thus made subject to redemption and payment out of said sinking fund shall thereafter cease to draw interest, and that the lien hereby created for
61 their security shall thereafter cease and determine; and that public notice shall annually be given by advertisement signed by one or more of the parties of the second part hereto of the numbers of the bonds so drawn and made subject to redemption and payment out of said sinking fund. It being understood and agreed between the parties hereto that the first payment or appropriation towards the creation of said sinking fund shall be made on the first day of July, A. D. 1860.

Fourthly. That said Illinois River Railroad Company, the party of the first part hereto, hath pledged and hereby doth irrevocably pledge for the purposes and objects hereinbefore specified, and in the manner aforesaid, to and with said parties of the second part, and the survivors

and survivor of them, their and his successors and successor, the entire net earnings and receipts of its railroad so long and while any of said 1,320 bonds shall be outstanding, unredeemed and unpaid.

Fifthly. That said Illinois River Railroad Company, the party of the first part hereto, shall and will well and truly pay the said sum of money in said 1,320 bonds mentioned, together with the semi-annual
62 interest due or to become due thereon at the rate of ten per centum per annum, at the times, in the manner and at the place specified therein.

And, further, said Illinois River Railroad Company hereby covenants and agrees that in case it shall for the space of thirty day' make default in the payment of the semi-annual interest due or to become due upon any or either of said 1,320 bonds, or in case it shall fail to create and maintain with and out of the net earnings and receipts of its railroad, as hereinbefore provided, a sinking fund for and to be applied in payment or redemption of said 1,320 bonds in the manner hereinbefore specified, then and in either of said cases, after the lapse of said thirty days, the whole principal sum mentioned in each and all of said 1,320 bonds shall forthwith be and become due and payable, and the lien or incumbrance hereby created for the security and payment thereof may be at once enforced, anything in said bonds or in this indenture to the contrary thereof notwithstanding, and that it shall and may be lawful, and the said parties of the second part and the survivors and survivor of them, and their and his successors
63 or successor are hereby expressly authorized and empowered, upon the request in writing of any two or more holders of any of said 1,320 bonds, to enter into and upon, and to take actual possession of, all and singular the railroad, premises, franchises, rights, property, real and personal, and effects hereby granted, conveyed, assigned, mortgaged, pledged, transfer'ed, and set over, or intended so to be, as security for the payment of said 1,320 bonds, and by themselves, or their agents, to take, collect, and receive the tolls, earnings, income, and profits thereof, and of every part thereof, or to be derived therefrom, and that they, said parties of the second part, and the survivors and survivor of them, and their and his successors and successor, shall and may proceed, and are hereby expressly authorized and empowered thereupon, but within such reasonable time as they may deem proper, not less than sixty days, and upon and after public notice by advertisement of at least eight weeks in one or more newspapers published in the cities of Pekin, Peoria, Alton, Springfield, and Chicago, in said State of Illinois, to proceed to sell at public auction, in said city of Pekin, to the highest bidder, as well all and singular the said railroad,
64 rights, and franchises as all other the property, real and personal, and premises hereby granted, conveyed, assigned, mortgaged, pledged, transfer'ed, and set over, or intended so to be, and all benefit and equity of redemption whatsoever of the said Illinois River Railroad Company, the said party of the first part hereto, of, in, and to the same, and every part and parcel thereof, together with the benefit of the franchise belonging thereto, or connected therewith; and as the attorney or attorneys of the said Illinois River Railroad Company, the party of the first part hereto, for that purpose by these presents duly appointed and constituted, the said parties of the second part, and the survivors or survivor of them, and their and his successors or successor, shall have full power and authority to make, execute, and deliver to the purchaser or purchasers thereof good, valid, and sufficient deed or deeds, conveyance or conveyances, assignments, or transfers, in fee simple, or

otherwise, of said railroad, lands, tenements, and real estate, and of all and singular the said personal or other property, rights, and premises hereby granted, assigned, transferred, or conveyed as aforesaid, which sale, so to be made as aforesaid, and which deeds, conveyances,
65 assignments, and transfers so to be made and delivered as aforesaid, shall operate to convey, assign, transfer, and vest in said purchaser or purchasers all the right, title, interest, and estate whatsoever, reversionary or otherwise, of the said Illinois River Railroad Company, the party of the first part, of, in, and to the premises so sold, conveyed, assigned, or transferred, and which said sale so to be made shall be a complete and a perpetual bar, both at law and in equity, against said Illinois River Railroad Company, the party of the first part, its successors and assigns, and all other persons or parties claiming by, from, or under it or them in anywise or manner whatsoever, and that out of the moneys or proceeds arising either from said tolls, earnings, or receipts of said railroad and premises, or out or from said sale so to be made as aforesaid, after first deducting the expenses, disbursements, costs, charges, and counsel fees incurred in and about the conducting of said sale, or the running and operating said railroad, that they, the said parties of the second part, and the survivors or survivor of them, their and his successors or successor, shall pay said 1,320 bonds, or so many as
66 shall then be outstanding and unpaid, together with all arrears of interest then due or owing upon the same, rendering or paying over the surplus of all such moneys, if any there shall be, to the said party of the first part hereto, its successors or assigns.

This indenture further witnesseth, and these presents are upon the express condition, that upon the payment in full of said 1,320 bonds, and the interest due thereon, then these presents and the estate hereby granted shall cease and be void, and the said Illinois River Railroad Company, the party of the first part, shall be immediately and fully reinvested with the said premises hereby granted in law and in fact, without any entry or other act whatever, and that until default shall be made by said party of the first part hereto, either in the payment of said 1,320 bonds or in the payment of the interest due or to grow due thereon as aforesaid, or in keeping and observing any of its covenants and agreements hereinbefore contained, the said Illinois River Railroad Company, the party of the first part, and its successors and assigns, shall remain in the quiet and peaceable possession and enjoyment
67 of the said premises and property hereby granted or conveyed, or intended so to be as aforesaid.

This indenture further witnesseth, and it is hereby expressly agreed, that in case of the death, resignation, incapacity, or inability of any or either of the parties of the second part to act in the execution of any of the trusts aforesaid, then it shall and may be lawful, and the remaining, acting, surviving or competent trustee or trustees, and the president for the time being of said party of the first part, are hereby empowered to select and appoint by an instrument in writing, under their hands and seals (which shall be recorded in the same offices where this indenture shall be recorded), one or more competent persons to fill the vacancy or vacancies so created in manner aforesaid, and that such person or persons so appointed trustee or trustees shall have and possess and be vested with the same rights and powers as a trustee or trustees as he or they would have had and possessed or been vested with had he or they been originally made a party or parties of the second part to this indenture, and shall perform the same duties in all re-
68 spects; and until such appointment shall be so made in manner afore-

said, and notwithstanding any vacancy or vacancies as aforesaid, said remaining, surviving, acting or competent trustee or trustees shall have full power and authority to execute such and all the trusts hereby created, and their and his acts in the premises shall be as legal, valid and effectual in all respects and to all intents and purposes as if the same acts had been done and performed by all the parties hereto of the second part.

And in case said appointment shall be made in manner aforesaid, the said party of the first part hereby covenants to make, execute and deliver all such other or further instruments, deeds, indentures or assurances as may be necessary to enable the person or persons so appointed to execute the trust hereby created and declared, as fully and perfectly in all respects as he or they could have executed the same if originally made a party or parties of the second part to this indenture. In witness whereof, the said Illinois River Railroad Company, the party of the first part hereto, hath caused these presents to be subscribed by its president and attested by its secretary, and hath under the ex-
69 press authority of a resolution of its board of directors caused its corporate seal to be hereunto affixed: and the said parties hereto of the second part, for the purpose of signifying their acceptance of the trusts herein and hereby created, have hereunto subscribed their names and affixed their respective seals: all done the day and year first above written.

[L. S.] (Signed) RICHARD S. THOMAS,
President of the Illinois River Railroad Company.
M. H. L. SCHOOLEY,
Secretary of the Illinois River Railroad Company.
A. STUDWELL. [L. S.]
LUCIUS HOPKINS. [L. S.]
G. T. COBB. [L. S.]

Sealed and delivered in presence of—
J. A. ARMY, as to R. S. Thomas and M. H. L. Schooley.
J. C. LAWRENCE, as to A. Studwell, Lucius Hopkins, and G. T. Cobb.

70 STATE OF ILLINOIS,
Cass County, ss:

Be it remembered, that on this twenty-second day of November, 1858, before me the undersigned, a notary public within and for the county of Cass and State of Illinois aforesaid, duly commissioned and sworn, personally appeared Richard S. Thomas, president of the Illinois River Railroad Company, and Mahlon H. L. Schooley, the secretary of the said company, and to me severally and personally known as the president and the secretary of the said company, and as the real persons by whom and in whose names as such president and secretary the foregoing instrument was subscribed and executed; and they severally acknowledged before me that they severally subscribed and executed the foregoing instrument for and in behalf of, and as the act and deed of said company, for the uses and purposes therein expressed, under express authority of resolutions of its board of directors duly passed and adopted; and the said Richard S. Thomas, president as aforesaid, and said Mahlon H. L. Schooley, secretary as aforesaid, being by me duly and severally sworn, severally deposed as follows: That he knows
71 the corporate seal of said company, and that the seal affixed to the foregoing instrument is the corporate seal of said company, and was so affixed by the express order and direction of its board of

directors and under the authority of resolutions duly passed and adopted by said board, and entered upon the minutes of its proceedings.

In testimony whereof I have hereunto subscribed my name and affixed my seal notarial, this twenty second day of November, A. D. 1858.

[L. S.] JOHN A. ARMY,
Notary Public in and for Cass County, and State of Illinois.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered, that on this thirteenth day of November, A. D. 1858, before me the undersigned, a commissioner in and for the city and county of New York, appointed by the governor of the State of Illinois, under the laws of said State, with full power and authority to administer oaths and affirmations and to take testimony and depositions and acknowledgments, and proof of deeds and instrument' in writing under seal, to be used and recorded in the State of Illinois, duly
72 commissioned and qualified, personally appeared Alexander Studwell, Lucius Hopkins and George T. Cobb, to me personally known as the persons described in and who executed the forgegoing instrument; and they severally acknowledged that they had executed the same for the uses and purposes therein specified.

In testimony whereof I have hereunto subscribed my name and affixed my official seal, the day and year above written.

[L. S.] JOSEPH C. LAWRENCE,
Commissioner for the State of Illinois, in and for the County of New York.

as by the said mortgage or deed of trust with the said certificates of acknowledgment and proof of execution thereon endorsed, now in the possion of your orators and ready to be produced, will, when produced, more fully and at large appear; and your orators crave leave to produce and refer to the said original mortgage or deed of trust, or to duly exemplified copies of the record thereof, for greater certainty as a part of this their bill of complaint.

And your orators further say, that the said mortage or deed of trust was, in the month of November, A. D. 1858, filed for record in the offices of the recorder of deeds in and for the counties of Peoria,
73 Cass, Mason, Tazewell and Morgan, in said State of Illinois, and was thereupon in said month of November, A. D. 1858, duly recorded in each of said offices, and to which several records or duly exemplified copies thereof your orators crave leave to refer for greater certainty.

And your orators further say that at the time of the execution, delivery and recording of said mortgage or deed of trust, the railroad of said railroad corporation was in process of construction, in whole or in part, under and in pursuance of the special acts aforesaid, from Jacksonville, in the aforesaid county of Morgan, through the said counties of Cass, Mason and Tazewell to Peoria, in the aforesaid county of Peoria.

And your orators further say that for the purpose of a more specific identification of said bonds, secured to be paid by the aforesaid mortgage or deed of trust, the said thirteen hundred and twenty bonds were and are numbered in a consecutive series from number one to number thirteen hundred and twenty, both inclusive; and that before the issue and sale of said bonds hereinafter mentioned there was and is
74 engraved upon the face of each of said thirteen hundred and

twenty bonds a certificate which was and is duly signed by two of your orators, to the effect that such bond is one of the said thirteen hundred & twenty bonds intended to be secured to be paid by the aforesaid mortgage or deed of trust.

And your orators further say that soon after the execution and delivery of said mortgage the said railroad corporation did issue, negotiate and sell the aforesaid thirteen hundred & twenty bonds, amounting to the principal sum of one million and twenty thousand dollars, together with the aforesaid interest warrants for the payment of the interest to mature thereon and thereto annexed, to different persons, associations, corporations and parties for the purposes and objects specially authorized by the acts aforesaid, being the same bonds mentioned in and secured to be paid by the aforesaid mortgage or deed of trust, & that such persons, associations, corporations & parties purchased of the said railroad corporations and became the lawful holders and owners of said thirteen hundred & twenty bonds & of the interest warrants thereto annexed for a full and valuable consideration paid, advanced or given to said railroad corporation therefor by said persons, asso-
75 ciations, corporations & parties, & that such consideration was so paid, advanced, or given to said railroad corporation by said persons, associations, corporations and parties upon the faith and security of the aforesaid mortgaged premises pledged, granted, and conveyed as aforesaid to your orators to secure the payment of the said thirteen hundred and twenty bonds, and of the interest to accrue and become due thereon, and as an indemnity to the holders thereof and upon the faith and security of the aforesaid mortgage or deed of trust, and of the covenants and agreements therein set forth; and that the said thirteen hundred and twenty bonds are now outstanding and unpaid, and are now held and owned by different persons, associations, corporations and parties, holders or purchasers thereof, and who have become the holders, owners, or purchasers thereof for a full and valuable consideration paid and advanced by them therefor, upon the faith and security of the aforesaid mortgage or deed of trust, and of the covenants and agreements therein contained and set forth, and upon the faith and security of the said mortgaged premises and of the estate, lien, trusts, rights, power and authority, granted, given to and vested in
76 your orators in and by the aforesaid mortgage or deed of trust, and your orators are advised by their counsel, and believe and insist and charge that the present owners and holders of the said thirteen hundred and twenty bonds, and of the outstanding and *and* unpaid interest warrants accompanying the same, or annexed thereto, have and are entitled to the benefit, security and indemnity of the said mortgage or deed of trust and of the covenants and agreements therein contained and set forth, and of the said mortgaged premises and of the estate, lien, trusts, powers, rights and authority granted, created, given to and vested in your orators by the aforesaid mortgage or deed of trust for the security, purposes and objects therein expressed and declared.

And your orators further say that with and out of the moneys and property raised, had, and received by said railroad corporation, by and upon the aforesaid issue and sale of the said thirteen hundred and twenty bonds and the said interest-warrants accompanying the same, the said railroad corporation afterwards completed and put in operation its said railroad from Virginia in the county of Cass afore-
77 said, through the county of Mason aforesaid to Pekin, in the county of Tazewell aforesaid, and have graded and partly completed other portions of their line of railroad as authorized by the acts afore-

said and have acquired iron rails, chairs, and spikes, ties, and other materials sufficient to complete its entire line of railroad from Pekin aforesaid to Peoria, in the county of Peoria aforesaid, and have expended large sums of money towards the completion of the bridge across the Illinois River at Pekin aforesaid, and have acquired depot and station grounds and other lands for the convenient operation of its said railroad, and that the aforesaid mortgage or deed of trust constitutes and is in fact the first valid and subsisting lien and incumbrance upon the same and upon all the property, real, personal, and mixed of said railroad corporation and upon all its rights, privileges, securities, assets, goods, chattels, effects, and franchises as a security for the payment of said thirteen hundred and twenty bonds and the interest accrued and to accrue thereon and as indemnity to the holders thereof.

And your orator' further say that said railroad corporation has
78 failed to pay the semi-annual interest which has accrued and become due and payable since the thirteenth day of June, A. D. 1859, upon so many of said thirteen hundred and twenty bonds as amount in the aggregate to about the sum of one million of dollars; and has also failed to pay the semi-annual interest which has accrued and become due and payable since the first day of July, A. D. 1861, upon the residue of said thirteen hundred and twenty bonds, amounting in the aggregate to about the sum of twenty thousand dollars; and that, on the first day of July, A. D. 1862, said railroad corporation made default in the payment of the semi annual interest which became due and payable on that day on the entire issue of said thirteen hundred and twenty bonds, and said railroad corporation still remains and continues wholly in default in making payment of said accrued interest on said bonds as above stated and set forth.

And your orators further say that the coupons or interest warrants annexed to said bonds since their maturity have been duly presented by and on behalf of the holders of said bonds at the said Importers' and Traders' Bank in the city of New York, where the same are
79 made payable, and payment thereof duly demanded, and that such payment was refused, and that said railway corporation had not, at the time such demand was made, and has not since, deposited any funds in said bank for the payment of said coupons or interest warrants, or any of them, or made any provisions whatever for the payment of the same, or any of them, and that all the coupons or interest warrants which accrued and became due and payable on the first day of July, A. D. 1862, upon the whole issue of said thirteen hundred and twenty bonds, have remained, for upwards of the space of thirty days, and still wholly remain, in arrear and wholly unpaid, and that said railroad corporation, for upwards of thirty days, has made default in payment of the interest which has so as aforesaid become due and payable on said thirteen hundred and twenty bonds; and that upon application of the holders and owners of said bonds for payment of said accrued interest, said railroad corporation has refused to pay the same, or any part of the same, or make any provision for the payment thereof, or any part thereof, or to deposit in said Importers' and Traders'
80 Bank any funds for the payment or redemption of any of said accrued coupons or interest warrants, or otherwise in any manner to provide for the payment of the same or any of them.

And your orators further say that by reason of the aforesaid defaults in payment of the interest accrued as aforesaid upon the aforesaid bonds, and the lapse of more than thirty days since said several defaults were made by said railroad corporation, and by reason of and

according to the express agreements, stipulations, and covenants contained in each of said bonds, and in said mortgage or deed of trust, the principal sum specified in each and all said thirteen hundred and twenty bonds, at the expiration of thirty days from and after the aforesaid defaults, in payment of said interest, became and is now due and payable from said railroad corporation to the holders and owners of said bonds, and that the lien, security, and encumbrance given or created for their benefit or indemnity by said mortgage or deed of trust became forthwith and is now, by its express terms, provisions, and covenants fully operative and subsisting and capable of immediate enforcement for
81 the security and payment of the principal sums specified in all said bonds and the interest moneys due and to grow due upon the same, and for the full indemnity of all said owners and holders thereof.

And your orators further say that since the aforesaid defaults were made as aforesaid certain holders and owners of large amounts of said thirteen hundred and twenty bonds, served upon your orators, as trustees aforesaid, a notice or request in writing, to enter into and upon, and to take actual possession of said railroad, franchises and premises, described in the aforesaid mortgage or deed of trust, and to collect and receive tolls, income and earnings thereof, and to take and adopt all lawful ways and means for the foreclosure of said mortgage or deed of trust, and for obtaining a decree of a competent court for the sale of said mortgaged premises as your orators in and by said mortgage or deed of trust are authorized, directed, and empowered to do.

And your orators further say that soon after receiving such notice and request in substance and effect as above stated, and in pursuance of its requirements and of the powers vested in them by virtue of said
82 mortgage or deed of trust, your orators, as trustees as aforesaid, on or about July 12, A. D. 1862, applied to said railroad corporation to surrender to them and to allow and permit them, as such trustees, to enter into and upon, and to take actual possession of its railroad, franchises, and effects, and to run and operate said railroad, to collect and receive its toll and earnings, upon the trusts and for the uses and purposes specified in said mortgage or deed of trust, and that thereupon, to wit, on or about July 12, 1862, the said railroad corporation, by its board of directors duly adopted a preamble and resolutions in the words or in substance and effects as follows:

At a meeting of the board of directors of the Illinois River Railroad Company held at Virginia, in the county of Cass, State of Illinois, this 12th day of July, A. D. 1862.

Present: R. S. Thomas, president; B. S. Prettyman, V. P.; Wm. Thomas, directors; M. H. L. Schooley, secretary.

The minutes of the last meeting of this board were read and approved.

83 The president then stated that the company had made default in the payment of the coupons or interest warrants attached to and forming a part of the $1,020,000 of first mortgage bonds issued by this company, and bearing date November 1, 1858, and which became due and payable on the first day of January, 1862, and on the first day of January, 1862, at the Importers' and Traders' Bank, in the city of New York, and that this company had not cash means with which to meet or make said payment of interest, and that by reason of said default in January last the principal sum in each of said bonds became due and payable by the very terms of each bond after the lapse of thirty days after said default was made.

The president further stated that by reason of said default in the payment of said coupons or interest warrants, and the lapse of more than thirty days, the trustees under said first mortgage made to secure the payment of said bonds, dated November 1, 1858, duly executed by this company, were expressly authorized, upon the request in writing of any two or more holders of said bonds, to enter into and upon, and take actual possession of the railroad of this company, its premises,
84 rights, and franchises, property, real and personal, granted, conveyed or transferred by said first mortgage, as a security for the payment of the 1,320 bonds referred to therein, and by themselves or their agents to take, collect, and receive the tolls, earnings, income and profits thereof, and of every part thereof.

The president further stated that Messrs. Hopkins and Studwell, two of said trustees, are now here and have exhibited to him a notice in writing, served upon all the trustees, requiring them to take actual possession of the railroad of this company, and by themselves or their agents to run and operate the same, as in and by said first mortgage they are authorized to do.

Whereupon, on motion of Mr. B. J. Prettyman, the following resolutions were adopted:

Resolved, That the Illinois River Railroad Company hereby admits that the trustees under the mortgage or trust deed executed by this company to Messrs. Studwell, Cobb and Hopkins, trustees, dated November 1, 1858, to secure the payment of 1,320 of its mortgaged bonds, amounting in the aggregate to $1,020,000, are now justly and legally entitled to the actual possession of the railroad of this company
85 as provided in said mortgage or trust deed, and that said company hereby consents and agrees that said trustees, or any two of them, shall and may at once enter into and upon, and take actual possession of said railroad, and of all the property, real and personal, franchises and effects of this company, for the purposes and as is provided and covenanted in said mortgage or trust deed, and that they may run and operate said railroad, and collect and receive the entire earnings, income, and profits thereof, and apply the same as in and by said mortgage or trust deed is provided.

Resolved, That the president of this company be, and he is hereby, authorized and directed, in the name and on behalf of this company, to execute and deliver to said trustees any deed, writing, or paper, and to do any act he may deem proper or expedient, or as may be reasonably required to give and secure to said trustees full, complete, and actual possession of all and singular the railroad of this company, and of all its property real and personal, franchises, and effects, as provided and covenanted in said mortgage or deed of trust; and to do, perform, and execute all other acts, deeds, and things necessary or expedient, in
86 his judgment, in order fully in good faith and effectually to place said trustees in the actual possession of all the corporate property, franchises, and effects conveyed to them in and by said mortgage or trust deed, and to enable them, by themselves or their agents, to run and operate said railroad as provided in said mortgage or trust deed, and to collect and receive the entire earnings and income to be derived therefrom.

I, M. H. L. Schooley, secretary of the Illinois River Railroad Company, do hereby certify the foregoing to be a true copy of resolutions passed, adopted, and recorded by the board of directors of said company at Virginia, Illinois, on the 12th day of July, A. D. 1862.

In testimony whereof I have hereunto set my hand and affixed the seal of said company at Virginia, Cass County, Illinois, July 14th, 1862.

[SEAL.] M. H. L. SCHOOLEY,
Secretary.

And your orators further say that under and by virtue of the foregoing resolutions of said board of directors, and under and by virtue of the written consent, permission, and authority of the president of said
87 railroad corporation, given under and in pursuance of the aforesaid resolutions, and by virtue of the powers and authority vested in them in and by said mortgage or deed of trust, your orators on or about the 12th day of July, A. D. 1862, as trustees, did enter into and upon and take actual possession of said railroad, and the property, real, personal, and mixed, described in or intended to be conveyed by said mortgage or deed of trust, and also of certain rails, chairs, and spikes in the city of Peoria belonging to said railroad corporation, and covered and conveyed or transferred to your orators, as trustees, by said mortgage or deed of trust and otherwise by good and sufficient transfers and deliveries; and that your orators as such trustees since July 12th, 1862, by their agent or agents have run and operated said railroad for the benefit of the holders of said thirteen hundred and twenty bonds, and are still operating and running the same, and have since the day last-mentioned received the tolls and earnings of said railroad; and out of such earnings and receipts your orators have necessarily paid not only the operating, running, and current expenses, but have been com-
88 pelled to pay or discharge liabilities and expenses incurred in making repairs upon the track, and in procuring rolling stock and other things required for using and operating said railroad; and that the outlay of large sums of money are now required to put and keep said railroad in good and safe running order, for the transportation over it of freight and passengers; and that its entire net earnings and receipt' are wholly inadequate to meet and discharge such required outlays.

And your orators further say that inasmuch as the bridge across the Illinois River at Pekin is not built, and said railroad connected with the city of Peoria, its earnings and receipts since your orators have been in possession thereof have been very small; and that said railroad and all the franchises and premises embraced in said mortgage or deed of trust are a scanty, slender, and wholly inadequate security for the payment of said thirteen hundred and twenty bonds and the moneys now due thereon; and that said railroad corporation is in an insolvent condition and wholly unable to meet and pay its just debts and liabilities now due and owing, and that its railroad and corporate property and
89 effects are rapidly depreciating in value; and that your orators are advised, and believe, and state, that under the provisions, terms, and covenants of said mortgage or deed of trust it is made their duty as trustees to cause said mortgage premises, property, franchises, and effects to be sold without delay, and the net proceeds and avails thereof to be applied in payment of the amounts or sums of money due and owing, and to grow due and to become owing, for principal and interest upon all said thirteen hundred and twenty bonds.

And your orators further state, on information and belief, that the defendants, Isaac Vail, John Wear, & Leonard H. Wilkey, severally, citizens of the State of Illinois, have severally recovered judgments against said railroad corporation, as follows: The said Isaac Vail, for about the sum of four thousand one hundred and eighty dollars and costs; John Wear, for about the sum of two hundred and seventy

dollars and ninety cents & costs; and said Leonard H. Wilkey, for about one hundred and thirty dollars and costs. And that said several defendants last above mentioned severall' claim and insist that said judgments are wholly unpaid and unsatisfied, and are
90 valid lien upon the real estate conveyed to your orators in and by said mortgage or deed of trust. But your orators charge that all said judgments were recovered after the execution, delivery, and recording of said mortgage or deed of trust as heretofore stated, and that the lien or incumbrances created by said judgments are subsequent and subject to the prior subsisting and valid lien created by said mortgage or deed of trust upon all the property and estate, franchises and effects of said railroad corporation, and described in and conveyed by said mortgage or deed of trust to your orators, and hereinbefore set forth.

And your orators further say that they are unable, as trustees, by themselves or their agents, to run and operate said railroad profitably or advantageously for the holders and owners of said thirteen hundred and twenty bonds, or to make the advances in cash necessary to preserve and keep said railroad in repair and safe running order, or to execute the trusts vested in them or created by said mortgage or deed of trust without the aid and directions of this honorable court on
91 its equity side, or without like aid to sell said corporate property, franchises, and effects, and convey the same to the purchaser or purchasers thereof free and discharged from the lien of said judgment.

In consideration of the foregoing premises, and inasmuch as your orators can have adequate relief in this honorable court on its equity side, and to the end therefore that the said defendants, the Illinois River Railroad Company, and said defendants Isaac Vail, John Wear, & Leonard H. Wilkey may full, true, direct, and perfect answers make (an answer under oath from each of said defendants is hereby expressly waived) to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and that they were thereunto particularly interrogated; and that one or more receivers be appointed by this honorable court with all the usual powers of receivers in like cases, and especially with power and authority to take actual possession of and to run and operate said railroad, and to keep the same in repair, and to preserve from waste and injury all the corporate property, rights, franchises, and effects described in and conveyed by said mortgage
92 or deed of trust, and to collect and receive the rents, issues, tolls, earnings and revenues to be derived or received therefrom, and to take actual possession, custody and control of all property, real, personal and mixed, franchises, assets, securities and effects of said railroad corporation, and to apply and manage, use and disburse the same under an order of this honorable court pending and until said corporate property shall be sold under and by virtue of a decree of this honorable court; and that the accounts, receipts, disbursements, outlays, and liabilities of your orators as trustees in or connected with the operating and running of said railroad since July 12th, A. D. 1862, when they took possession thereof, may be stated, adjusted, and finally allowed, adjudged, and passed; and that a reasonable and just compensation may be awarded to them for their services in executing the trusst created and devolved upon them in and by said mortgage or deed of trust; and that the right and interests of the holders, owners, and purchasers of said thirteen hundred and twenty bonds may be ascertained, adjusted, and adjudged, and the amounts or sums of money due or owing to
93 each be fixed, determined and adjudged; and that the aforesaid

mortgage or deed of trust may by a decree of this honorable court be foreclosed, and that under and by virtue of such decree all and singular said railroad corporate property, real, personal and mixed, and all the rights, privileges, franchises and securities, assets and effects, chattels and hereditaments, described in or conveyed or intended to be conveyed, pledged, or transferred by said mortgage or deed of trust, including said rails, chairs, and spikes hereinbefore mentioned, be sold at public auction at such time and place and upon such terms and conditions as this honorable court may in and by said decree order and direct; and that said defendant, The Illinois River Railroad Company, and said defendants, Isaac Vail, John Wear, and Leonard H. Wilkey, and each and every of them, and every other person, party or corporation whomsoever, wheresoever and whatsoever, claiming under or by, from or under, either or any of the defendants to this suit since the commencement of this suit, may be forever barred and foreclosed both at law and in equity of all right and claim to or lien upon and equity of redemption in said
94 mortgaged property, premises, franchises and effects, and every part and parcel thereof; and that out of the net proceeds and avails of such sale or sales, and of such earnings, tolls and receipts which may come to the hands of your orators as trustees or into the hands of any receiver or receivers, hereafter appointed, there may be paid to your orators as trustees their reasonable costs, counsel fees and expenses in this suit and incident to the execution of the decree or decrees therein and the sale of the mortgaged premises, and also a reasonable compensation to your orators for their services in executing the trusts aforesaid, and that the residue of the net proceeds and avails of said sale and of said tolls, earnings and receipts be applied under the said decree in payment of the principal and interest then due and owing upon all said thirteen hundred and twenty bonds in rateable proportions or otherwise as this honorable court may direct in and by said decree, and that your orators may have such further and other or such further or other or different relief as may be just and equitable, or such as their case may require and to equity may belong. And the said railroad corporation, its
95 officers, agents, servants, and attorneys, may in the mean time be enjoined and restrained from assigning, transferring, mortgaging or otherwise interfering with the corporate property, franchises and effects described in and conveyed or intended to be conveyed to your orators in and by said mortgage or deed of trust, and from collecting any rents, issues, tolls, earnings or revenues, derived or to be derived from the same, and from interfering with the running or operating of said railroad by your orators, or their agents, or by any receiver or receivers appointed by this honorable court:

May it please your honors to grant unto your orators, as trustees as aforesaid, the people's writ of injunction issuing out of and und' the seal of this honorable court, commanding and enjoining the said defendant, The Illinois River Railroad Company, its officers, agents, attorneys and servants, from interfering with the running or operating of said railroad by your orators or their agents or by any receiver or receivers appointed or to be appointed by this honorable court, and from collecting any tolls, revenue, or earnings of said railroad, and also enjoining and restraining said defendant last above named as is in this behalf in this your
96 orator's bill of complaint more fully prayed for and expressed.

And may it please your honors to grant unto your orators, as trustees as aforesaid, the people's writ of subpœna, to be directed to the said defendants, The Illinois River Railroad Company, and the said Isaac Vail, John Wear, and Leonard H. Wilkey, commanding them and

each of them by a certain day and under a certain penalty therein to be inserted to be and appear before the judges of this honorable court, and then and there full, true, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such order and decree therein as to said judges shall seem meet and as shall be agreeable to equity and good conscience.

And your orators will ever pray, &c.

S. T. LOGAN & HAY & CULLOM,
Solicitors for Complainants.
JOHN CLEAVELAND, *Of Counsel.*

(Endorsed:) Filed Dec. 17th, 1862. P. P. Enos, clerk.

(Endorsed:) Filed January 2nd, 1874. J. A. Jones, clerk.

97 Whereupon a writ of subpœna was issued as prayed for, directed and delivered to the marshal of the southern district of Illinois to execute, which said writ of subpœna with the return of the marshal thereon endorsed is in the words and figures following, to wit:

Writ of subpœna.

[Stamp.]

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

We command you that you subpœna the Illinois River Railroad Company, Isaac Vail, John Wear, and Leonard H. Wilkey, if they be found in your district, to be and appear before our judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of February next, to answer the bill of complaint of Alexander Studwell, Lucius Hopkins, and George S. Cobb, this day filed in the clerk's office of said court in said city of Springfield, then and there to receive and abide by such judgment and decree as shall there or thereafter be made, upon pain of judgment being pronounced against them by default.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme
98 Court of the United States of America, at Springfield aforesaid, this seventeenth day of December, in the year of our Lord one thousand eight hundred and sixty-two, and of our Independence the eighty seventh year.

[L. S.] P. P. ENOS, *Clerk.*

MEMORANDUM.—The within named defendants are notified that unless they be and appear as within commanded and enter their appearance in the clerk's office of said court at Springfield aforesaid, on or before the day to which this writ is returnable, the complainants' bill will be taken pro confesso as against them and decree entered accordingly.

P. P. ENOS, *Clerk.*

I hereby appoint Hezekiah Naylor my special deputy to execute this writ. December 23rd, 1862.

D. L. PHILLIPS,
U. S. Marshal.

Executed this writ by delivering a true copy of the same to the within named L. H. Wilkey and one to B. S. Prettyman, vice president of the Illinois River Railroad Company, this 27th day of December, 1862.

D. L. PHILLIPS,
U. S. M.
H. NAYLOR,
Special Deputy.

I hereby appoint C. B. Hamilton my special deputy to execute this writ this Dec. 28th, 1862.

D. L. PHILLIPS, *U. S. M.*

99 Served this writ on the 7th day of January, 1863, by reading the same to Isaac Vail, within named, and delivering to him a true copy of the same.

D. L. PHILLIPS, *U. S. M.*
C. B. HAMILTON, *S. D.*

I hereby appoint Archibald Campbell my special deputy to execute this writ. January 13th, 1863.

D. L. PHILLIPS,
U. S. Marshal.

Executed this writ on the 15th day of January, A. D. 1863, by reading the same to John Wear, within named, and delivering to him a true copy of the same.

D. L. PHILLIPS,
U. S. Marshal.
ARCH. CAMPBELL,
Special Deputy.

(Endorsed:) Filed Jan. 19th, 1863. P. P. Enos, clerk.

And afterwards, to wit, on the 16 day of June, at the June term of court, in the year A. D. 1863, the following proceedings were had in said court in said cause, and entered of record, to wit:

100 In the circuit court of the United States for the southern district of Illinois. In chancery.

TUESDAY, *June* 16, *A. D.* 1863.

Present, the Hon. David Davis, presiding judge; the Hon. Samuel H. Treat, associate judge.

ALEXANDER STUDWELL, LUCIUS HOPKINS, and George T. Cobb, complainants.
vs.
THE ILLINOIS RIVER RAILROAD COMPANY, Isaac Vail, John Wear, and Leonard H. Wilkey, defendants.
} In chancery.

The defendants in this suit having been severally duly served within the southern district of the State of Illinois, and within the jurisdiction of this court, with a supœna to appear and answer the complainants' bill of complaint therein: and the Illinois River Railroad Company and Isaac Vail, two of the said defendants, having duly entered

their appearance in this suit by their respective solicitors, and the Illinois River Railroad Company having withdrawn their answer
101 filed herein and consented to this decree, and the defendant Isaac Vail having withdrawn his answer herein, and the defendants John Wear and Leonard H. Wilkey having failed to appear in this suit either in person or by solicitor, and all of the said defendants in this suit having failed to plead, answer, or demur to said bill of complaint within the time required by law, on motion of the said complainants, by their counsel, it is ordered, adjudged, and decreed, and this court doth order, adjudge, and decree, that the said bill of complaint be taken as confessed by the said defendants; and thereupon this cause came on to be heard on the said bill of complaint and documentary evidences; on consideration whereof this court doth find, adjudge, and decree, that the equity of this case is with the said complainants, and that all and singular the allegations and charges in said bill of complaint contained are true, and particularly—

First. That the said Illinois River Railroad Company was incorporated and organized under and pursuant to the several acts of the general assembly of the State of Illinois, as alleged in the said bill of complaint.

Second. That the said Illinois River Railroad Company is domi-
102 ciled in and a citizen of the State of Illinois, and is located and has its principal place of business within the southern district of the State of Illinois, and within the jurisdiction of this court; and that the defendants Isaac Vail, John Wear, and Leonard H. Wilkey, at the time of the filing of said bill of complaint, were and still are citizens of the State of Illinois.

Third. That at the time of filing said bill of complaint Alexander Studwell and Lucius Hopkins, two of the said complainants, were and still are citizens of the State of New York, and that at the same time George T. Cobb, the other of said complainants, was and still is a citizen of the State of New Jersey.

Fourth. That the said Illinois River Railroad Company located its road pursuant to the aforesaid acts, and commenced the construction and building of its railroad within the time in that behalf specified in its charter.

Fifth. That afterward, for the purposes in the bill of complaint mentioned, and for the objects and purposes authorized by law, the said Illinois River Railroad Company, pursuant to resolutions previously duly passed and adopted by its board of directors, duly made and
103 executed under its corporate seal, and delivered to the said complainants as trustees, the mortgage or deed of trust which is mentioned and set forth in said bill of complaint, whereby the said Illinois River Railroad Company conveyed, granted, and mortgaged unto the said complainants all its corporate property, real and personal, franchises and effects, acquired and to be acquired, and particularly mentioned and described in said mortgage and in said bill of complaint, upon the conditions, and upon the trusts, and for the purposes particularly specified therein, and for the securing the payment of the 1,320 corporate bonds of said Illinois River Railroad Company in said mortgage and bill of complaint referred to and hereinafter mentioned.

Sixth. That said mortgage was duly recorded according to law as charged in the said bill of complaint, and is a valid conveyance of and a first lien upon the franchises, corporate property, real and personal, and effects in said mortgage and bill of complaint referred to for the purposes therein mentioned.

Seventh. That 1,320 bonds of the aggregate amount of one mil-

104 lion and twenty thousand dollars of principal were duly made and executed under the corporate seal of and issued by said Illinois River Railroad Company with interest warrants or coupons for the payment of the interest to accrue thereon, to each of said bonds annexed, as is in the said bill of complaint charged; 720 of the said 1,320 bonds being for the sum of $1,000 each, with interest from the date thereof, and 600 of the said 1,320 bonds being for the sum of $500 each, with interest from the date thereof; all of said bonds being dated November 1, 1858, and all of said bonds bearing interest at the rate of ten per centum per annum payable semi-annually.

Eight. That the whole number of said bonds intended to be secured by said mortgage to said complainants, and amounting in the aggregate, exclusive of interest thereon, to the sum of one million and twenty thousand dollars, are outstanding, owing, and unpaid, and that said Illinois River Railroad Company has failed to pay the semi-annual interest which has accrued and become due and payable since the 30th day of June, 1859, upon so many of said 1,320 bonds as amounts to the sum of one million dollars, and has also failed to pay the semi-annual
105 interest which has accrued and become due and payable since the first day of July, 1861, upon the residue of said 1,320 bonds, amounting in the aggregate to the sum of $20,000; and that on the first day of July, 1862, the said railroad corporation made default in the payment of the semi annual interest which became due and payable on that day on the entire issue of said 1,320 bonds, and said railroad corporation still remains and continues wholly in default in making payment of said accrued interest on said 1,320 bonds; and that by reason of such default in the payment of said interest for the space of thirty days after the same became due the whole principal sum of each of said bonds became due and payable on the first day of January, 1860, and that the whole aggregate amount due and owing upon said bonds for principal and interest at the date of this decree is the sum of one million four hundred and nineteen thousand six hundred and sixty-six dollars; and that the said complainants are well entitled to a decree of foreclosure of said mortgage, and for a sale of the railroad premises, property, real and personal, franchises, and effects in said mortgage described, and also
106 for the payment of the said Illinois River Railroad Company of the amount due upon said mortgage bond, both for principal and interest; and also for the payment of the lawful and taxable costs and expenses of such sale, and also for the payment of the costs and expenses of said complainants in the execution of the trusts created in and by said mortgage.

Whereupon it is ordered, adjudged and decreed, and this court by virtue of the power and authority therein vested doth order, adjudge, and decree that the said Illinois River Railroad Company, before the day which shall be fixed for the sale hereinafter provided for, pay into the hands of Antrim Campbell, master in chancery of this court, for the said complainant', as trustees for the holders of the bonds aforesaid, the aforesaid sum of money at the date of this decree found to be due and owing upon said 1,320 bonds, to wit, the sum of one million four hundred and nineteen thousand six hundred and sixty-six dollars, together with interest thereon from the date of such decree to the time of such payment, at the rate of six per cent. per annum, and also the com-
107 plainants' costs and expenses of this suit, and the expenses and liabilities of the said complainants paid or incurred by them in the execution of the trusts created in and by said mortgage, to be taxed and ascertained under the direction of this court.

And in default of such payment, it is further ordered, adjudged, and decreed by this court that the mortgaged premises, property, real and personal, franchises and effects mentioned and described in the said bill of complaint to be sold at public auction by or under the direction of the said Antrim Campbell, master in chancery, who is ordered and directed to execute and carry into effect this decree: that the said Antrim Campbell, master in chancery aforesaid, give public notice of the time and place of such sale according to law and the course and practice of this court, and that such sale shall be made at the door of the court-room of this court, in the city of Springfield, in the State of Illinois, on a day to be specified in the public notice of sale, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon of the day so to be specified, or of the day to which such sale shall
108 be adjourned or postponed, and that such public notice of said sale shall be printed and published in one or more newspapers printed and published in Springfield, Chicago, Peoria, and Pekin, in the State of Illinois, for not less than sixty days prior to the day of sale; and such notice shall specify the time and place of said sale and the terms and conditions to be announced and prescribed as hereinafter provided; and if the property is purchased by the said complainants, their receipt shall be received in payment by the master, except as to so much as shall be sufficient to pay the costs of this suit.

And it is further ordered, adjudged, and decreed that any or either of the parties of this suit may become the purchaser or purchasers of said mortgaged premises, franchises, rights, and property, and the said master in chancery is hereby authorized and empowered to give, grant, and execute, acknowledge and deliver any and all proper and sufficient deeds and conveyances, grants, transfers or assurances whatever, to said purchaser or purchasers, and so as to vest in him or them a full and complete title to the premises, franchises and property so sold, and said master in chancery is hereby authorized to adjourn and postpone
109 said sale from time to time in his discretion, and if at any such sale any purchaser or purchasers shall fail to pay to said master in chancery on demand on the day of such sale the amount or percentage of the price bid and required to be paid by the terms of the sale to be prescribed and announced by said master on the day of sale and before the bidding commences, and also in his public advertisement, then and in such case said master in chancery shall again forthwith offer the said premises, franchises, and property for sale under the powers herein granted and conferred, and until the price or amount bid shall be paid or secured in the manner and as required by the terms of sale to be prescribed and announced as aforesaid by said master in chancery.

And it is further ordered, adjudged, and decreed that said Illinois River Railroad Company and the other defendants above named and each and every of them, and all persons, parties, and corporations claiming under them or either of them, be forever barred and foreclosed of and from all rights, title, interest, lien and equity, of redemp-
110 tion in and upon said mortgaged premises, franchises, rights and property, real and personal, and every part thereof, so sold by said master in chancery.

And it is further ordered, adjudged, and decreed that the purchaser or purchasers of said mortgaged premises, franchises, rights, and property at such sale shall be let into possession thereof, and that the said complainants and any of the defendants above mentioned who may be in the possession of said premises and property or any part thereof,

and any person, persons, or corporations who since the commencement of this suit has or have come into possession thereof under the complainants, under the defendants, or either or any of them, deliver possession of such premises and property to such purchaser or purchasers on production of said master's deed therefor, with a certified copy of an order of this court confirming the said master's report of such sale.

And it is further ordered, adjudged, and decreed that immediately upon such sale and the execution and delivery of such deed or deeds to the purchaser or purchasers the said master in chancery make a report of such sale, therein specifying the name of the purchaser or
111 purchasers of said mortgaged premises, rights, franchises and property and the amount of the proceeds thereof which have come into his hands, and what deed or deeds, transfer or transfers thereof he may have executed and delivered.

And it is further ordered, adjudged, and decreed that if the moneys arising from the sale of the whole of the said mortgaged premises shall be insufficient to pay the full amount of the principal and interest due and to become due on all said bonds (after first paying the just expenses of said complainants in the execution of the trusts created by said mortgage, and the lawful taxable costs of said complainants in this suit, and the lawful commissions, expenses, and disbursements of said master in chancery in, upon, and about the execution of this decree and in making said sale), the said master in chancery shall specify in his report of said sale the amount of such deficiency, and that on the coming in and confirmation of said report, the said Illinois River Railroad Company, which is liable in its corporate capacity for the payment of the bonds secured to be paid by said mortgage, pay the amount of said deficiency
112 and interest thereon from the date of the last-mentioned report, and that said complainants have execution therefor.

And it is further ordered, adjudged, and decreed that such master in chancery, out of the proceeds of such sale, and out of any moneys that may come into his hands from the net earnings of said railroad while in possession of the complainants, do retain his lawful commissions, expenses, and disbursements in executing this decree and in conducting said sale, and also a sufficient sum to meet and pay the complainants' costs in this suit, to be taxed by the clerk of this court, including a fee of $150 to the said master for executing this decree, and that he pay over to the complainants the remainder of the purchase-money of said property, who shall retain therefrom a sufficient amount to repay them all advances and liabilities paid or incurred by the said complainants as well as attorney's fees for foreclosing the mortgage in this case, and also in relation to their action in the execution of the trusts created in said mortgage, to be ascertained as hereinafter mentioned, and the said complainants, as trustees, do in the next place and without delay
113 apply, appropriate, and distribute so much of the residue of said net proceeds and moneys realized from such sale or sales, and any net earnings and receipts from said railroad which may be in their hands while said road was run and operated by said complainants, to and among the holders and owners of said mortgage bonds mentioned in said mortgage to said complainants, as shall be sufficient to pay and discharge in full all moneys due or owing, or to become due or owing upon said bonds, both for principal and interest, upon the surrender of said bonds and the coupons thereon to them for cancellation; but in case such residue of such net proceeds and moneys shall be insufficient to pay in full the whole amount due or owing upon all said bonds as

last aforesaid, then said complainants, as trustees, shall make a pro rata distribution of the same among the said holders and owners according to the number and amounts of said bonds held or owned by them respectively, and shall take from them respectively all proper receipts therefor, and cause all proper endorsements or receipts to be made
114 or endorsed upon their respective bonds, and that all payments and distributions hereby ordered shall be made only upon the production to said complainants, as trustees, by said holders or owners of said bonds and the coupons thereto attached or belonging, and that the said trustees shall, after receiving said proceeds and moneys arising from said sale or sales, cause a notice to be published in one or more newspapers printed in Springfield, in the State of Illinois, and in the city of New York, requiring the holders and owners of said bonds to present the same to them at a place and on or before a day to be therein specified, to the end that distribution may be made of said moneys or of said net proceeds, and may be paid or distributed as herein provided.

And it is further ordered, adjudged, and decreed that in case said mortgaged premises, rights, franchises, and property shall be purchased by any or either of the holders of said mortgage bonds secured by said mortgage to said complainants at a price or sum equal to the whole amount due or owing for principal and interest on all said bonds
115 as hereinbefore stated and adjudged, and equal to the amount of the expenses, and advances, and liabilities of said complainants in executing said trusts, and to the aforesaid taxable costs and the aforesaid commissions, and expenses, and disbursements of said master, then and in such case such purchaser or purchasers shall be allowed by said trustees, as special masters or commissioners, to surrender to them for cancellation all of said bonds so held by him or them, and said special masters or commissioners shall take and receive the same in payment or part payment of the purchase-price bid or agreed to be paid for said mortgaged premises: that is to say, to the extent and amount of the sum of money due or owing for principal and interest on the bonds so actually surrendered and cancelled.

But in case said mortgaged premises, rights, franchises, and property shall be purchased by any or either of such holders or owners of said bonds, or any of them, as aforesaid, at a price less than the whole amount due or owing as aforesaid upon all said bonds, then and in such case such purchaser or purchasers shall be allowed by said special
116 masters or commissioners to surrender his or their said bonds, with the coupons thereon, for cancellation to the extent and value only of his or their pro rata interest, as such holders or owners of said bonds in the funds or moneys raised or created by said sale or sales; and said special masters or commissioners shall take, hold, and receive the same at such reduced or pro rata value in payment or part payment of the purchase price bid or agreed to be paid for said mortgaged premises: and that the residue of such price or bid shall be paid by such purchaser or purchasers to said special masters or commissioners in cash.

And it is further ordered, that said special masters or commissioners shall, as soon as practicable after said sale shall be made, make a full and special report to this court of all their acts, doings, receipts, and payments in the premises, under or by virtue of this decree, accompanied with all proper vouchers, accounts, statements, and receipts, and file the same with the clerk of this court; and that they shall deposit with the clerk of this court any surplus moneys or funds which

117 may remain in their hands, subject to the further order and direction of this court in the premises; and that said special masters or commissioners shall be at liberty upon due notice to any of the defendants who have appeared in this suit to apply to this court on the foot of this decree, from time to time, for further or other directions or instructions of this court in the premises, or for modification of this decree, or otherwise, as the exigencies of the case may require.

And it is further ordered, adjudged, and decreed, that until such sale shall be confirmed and possession given pursuant thereto, the said complainants, trustees in possession and special master, commissioners hereby appointed, be, and they are hereby, invested with all the powers and charged with all the duties of receivers in this action of the entire road of said defendants, the Illinois River Railroad Company, and all the property, real, personal, and mixed, described in and conveyed or intended to be conveyed to said complainants as trustees in and by said mortgage or deed of trust, with full power to run and operate said road,

and with all the other usual powers of receivers in like cases.

118 And it is further ordered, adjudged, and decreed that said complainants may, and they are hereby authorized to execute, acknowledge, and deliver deeds of conveyance of the mortgaged premises to the purchasers thereof, in their capacities as trustees, special master, commissioners and receivers as aforesaid.

And it is further ordered, adjudged, and decreed that the said master in chancery may, in his discretion, instead of advertising said railroad, railroad franchises, property, real and personal, rights and effects, by the general description thereof contained in said mortgage and hereinafter contained, publish in his advertisement and exhibit at said sale a more full, minute, and complete statement, inventory, and description of the location and boundaries of said railroad, and of the real and personal property, rolling stock, rights, franchises and effects hereby authorized to be sold in manner aforesaid.

The description and particular boundaries of the property, rights, and franchises authorized to be sold by virtue of this decree, so far as the same can be ascertained from the said mortgage and from the bill of complaint, are as follows, to wit:

All and singular the railroad of said Illinois River Railroad Company, constructed or hereafter to be constructed from the town of Jackson, in Morgan County, Illinois, to the junction with the Peoria & Hannibal Railroad, in Peoria County, Illinois, and all future extensions of

said railroad, as now authorized by the charter and special acts

119 aforesaid, together with all its lands, tenements, and hereditaments, acquired and appropriated, or which shall hereafter be acquired and appropriated, for the purpose of a right of way for a single or a double-track railroad; and also the appurtenances thereunto belonging, and also all its lands acquired and appropriated, and to be acquired and appropriated for depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, workshops, superstructures, erections and fixtures; and also all and singular, the franchises, rights and privileges now owned, possessed or acquired, or which shall thereafter be owned, possessed or acquired, by said Illinois River Railroad Company; and also all the rails, bridges, ways, piers, depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, work-shops, erections, superstructures, fixtures, privileges, franchises, and rights of said Illinois River Railroad Company, and all the lands, tenements, hereditaments and real estate acquired and appropriated wheresoever and whatsoever, or now owned by said Illinois River Railroad Company, or which shall

hereafter be owned by it; and also all and singular the locomotives, tenders, passenger cars, freight cars, and all other cars, carriages,
120 tools, machinery, and equipments for said railroad, and now owned by said Illinois River Railroad Company and in any way relating or appertaining or belonging to or connected with said railroad or the running or operating the same, together with all rents, issues, incomes, profits, moneys, rights, benefits, and advantages derived or to be derived, had or received therefrom, by said Illinois River Railroad Company in any way whatsoever.

And it is further ordered, adjudged, and decreed, that the said Antrim Campbell, master in chancery, who is hereby appointed special commissioner for the purpose hereinafter next mentioned, do take and state, adjust, pass, and finally allow, under the oaths of said complainants, on account of the receipts, disbursements, advances, outlays, and liabilities paid, made, or incurred by the said complainants, as trustees under said mortgage, in or connected with the operating and running of said railroad since July 12, 1862, when they took possession thereof, as charged in said bill of complaint, and that in taking and stating the said account the said Antrim Campbell, as such special commissioner, do make to the said complainants all just allowances; and that the said Antrim Campbell, as such special commissioner, do also as-
121 certain and report to this court what will be a just and reasonable compensation to the complainants to be awarded to them in executing the trusts created and devolved upon them in and by said mortgage or deed of trust, as well as all attorneys' fees paid or contracted by them and all other expenses by them had or incurred, and that the said Antrim Campbell, as such special commissioner, do make and file his report to this court, upon the several matters hereinbefore referred to him.

And it is further ordered, according to the stipulations filed herein that nothing in this decree contained shall in any wise effect any right, title, or claim now held or owned by Richard S. Thomas, or the defendant Vail in and to fifty thousand dollars of bonds issued by the county of Morgan to said Illinois River Railroad Company, but their rights or claims shall be decided in the suit now pending in the Morgan County circuit court.

And afterwards, to wit, on the 20th day of June, at the June term of court, in the year A. D. 1864, the said master in chancery filed his report, which is in words and figures as follows, to wit:

122 *Master's report.*

In the circuit court of the United States, southern district of Illinois.
In chancery.

ALEXANDER STUDWELL, LUCIUS HOPKINS and George S. Cobb, complainants,
vs.
THE ILLINOIS RIVER RAILROAD COMPANY, Isaac Vail, John Wear and Leonard H. Wilkey, defendants.

The undersigned, master in chancery of said court, reports to the court that in pursuance of the decree rendered in the above-entitled cause at the June term of said court A. D. 1863 (the Illinois River Railroad Company not having paid to the undersigned the sum of money at

the date of said decree found to be due and owing upon the 1,320 bonds, to wit, the sum of one million four hundred and nineteen thousand six hundred and sixty-six dollars ($1,419,666), together with interest thereon from the date of said decree, at the rate of six per cent. per annum, and costs, liabilities, and expenses), he offered the premises therein described for sale at public auction to the highest and best bidder, for cash in hand, at the door of the court-house of the cir-
123 cuit court of the United States, within and for the southern district of Illinois, at the city of Springfield, at the hour of 12 o'clock m. of the first day of October, A. D. 1863, having first given public notice of the time and place of said sale, by public auction, in the Illinois State Register, a newspaper published in Springfield, Illinois, for more than sixty days prior to the day of sale: also by publication in the Chicago Times, a newspaper published in Chicago, Illinois, for more than sixty days prior to said sale; also by publication in the Peoria Morning Mail, a newspaper published in Peoria, Illinois, for more than sixty days prior to said sale; also by publication in the Tazewell Register, a newspaper published in Pekin, Illinois, for more than sixty days prior to said sale, and as proof of said several publications, he files the several certificates, with notices annexed, marked A, B, C, D, and makes the same a part of this report, the property sold being all and singular the property enumerated, described, and comprehended in the notices and advertisements as aforesaid, and he did, in offering said property, enumerate and specify as comprehended and offered at the sale afore-
said, amongst the other property enumerated, all bridge-timber,
124 iron, and other materials belonging to said Illinois River Railroad Company, at Pekin, or thereabouts, and all iron rails, chairs, spikes, and other materials belonging to said company at Peoria, Illinois, and said property so being enumerated and offered as aforesaid, and as described in the following notice, to wit:

Legal advertisements.

In the circuit court of the United States for the southern district of Illinois, June term, A. D. 1863.

ALEXANDER STUDWELL, LUCIUS HOPKINS and GEORGE S. COBB, complainants, *vs.* ILLINOIS RIVER RAILROAD COMPANY ET al., defendants. } In chancery.

Public notice is hereby given that, by virtue of a decree rendered in the above-entitled cause at the June term, A. D. 1863, of the circuit court of the United States, within and for the southern district of Illinois, the undersigned, master in chancery within and for said court and special commissioner in said cause, will sell at public auction to the highest and best bidder, for cash in hand, at the door of the court-
125 room of the circuit court of the United States, within and for the southern district aforesaid, in the city of Springfield, in the State of Illinois, at the hour of 12 o'clock meridian of the first day of October, in the year of our Lord one thousand eight hundred and sixty-three, the following described property, to wit:

All and singular the railroad of the said Illinois River Railroad Company constructed, or thereafter to be constructed, from the town of Jacksonville, in Morgan County, Illinois, to the junction of the Peoria and Han-

nibal Railroad, in Peoria County, Illinois, and all future extensions of said railroad as now authorized by the charter and special acts aforesaid, together with all its lands, tenements and hereditaments acquired and appropriated, or which shall hereafter be acquired and appropriated for the purpose of a right of way for a single or a double track railroad, and also the appurtenances thereunto belonging; and also all its lands acquired and appropriated and to be acquired and appropriated for depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, workshops, superstructures, erections and fixtures; and also all and singular the franchises, rights and privileges now owned, pos-
126 sessed, or acquired, or which shall thereafter be owned, possessed, or acquired by said Illinois River Railroad Company; and also all the rails, bridges, ways, piers, depots, engine-houses, car-houses, station-houses, warehouses, machine-shops, workshops, erections, superstructures, fixtures, privileges, franchises, and rights of said Illinois River Railroad Company, and all the lands, tenements, hereditaments and real estate acquired and appropriated wheresoever and whatever, or now owned by said Illinois River Railroad Company, or which shall hereafter be owned by it; and also all and singular the locomotives, tenders, passenger-cars, freight-cars, and all other cars, carriages, tools, machinery and equipments for said railroad, and now owned by said Illinois River Railroad Company, and in any way relating or appertaining or belonging to or connected with said railroad, or the running or operating the same, together with all rents, issues, incomes, profits, moneys, rights, benefits and advantages derived, or to be derived, had or received therefrom by said Illinois River Railroad Company in any way whatsoever; the following being a more minute schedule of the property of the said Illinois River Railroad Company, as appears from a schedule thereof filed
127 among the papers in said cause, to wit:

1st. The Illinois River Railroad, its appurtenances, appendages, franchises, rights of way, &c., Jacksonville, Illinois, to Peoria, Illinois, as fully and to the same extent as secured, acquired or possessed by the Illinois River Railroad Company, said road being finished and in running order from Virginia, in Cass County, to Pekin, in Tazewell County, a distance of about sixty miles. The piers across the Illinois River at Pekin partially completed, and the road-bed partially completed to the junction of the Peoria and Hannibal Road, the right of way mostly secured throughout the whole route, turnouts and necessary ground at proper points acquired for turnouts, depots and freight-houses along that portion of the road completed, and *and* four handed cars connected with said road.

2nd. All water-tanks, tank-houses, pumps, gearing and appurtenances for same, pump-houses, machine-shops, and all tools and machinery connected therewith, engine-houses, machine-shops, and all tools and machinery connected therewith, engine-houses and appurte-
nances, blacksmith shops, pump and pump-houses and all tools
128 connected therewith, freight houses, depots, together with all the lands and grounds connected therewith, acquired or belonging to said company, for depots, turnouts, machine-shops, or other purposes connected with said road, and all tools and equipments connected therewith.

All personal property or effects belonging to said Illinois River Railroad Company, consisting, among other things, one iron safe, at Pekin; one four horse-power portable engine, with belts; gearing, circular and other saws for cutting wood and other timber; all tools used by section

men; and all other tools, machines, or machinery of the description of personal property belonging to said company; also a lot of chairs and spikes for said road, and a lot of iron and steel belonging to said company, unless the said Illinois River Railroad Company shall, before said day of sale, pay to the undersigned for the holders of the bonds for the payment of which said decree is made such sum of money as is due upon said decree, together with interest thereon from the date of said decree to the time of payment, at the rate of six per cent. per annum: also all costs and expenses as provided in said decree.

129 The undersigned is authorized by said decree to execute and deliver all proper and sufficient deeds and conveyances so as to vest in the purchaser or purchasers full and complete title to the premises, franchises, and property to be sold.

(Signed) ANTRIM CAMPBELL,
Master in Chancery.
Circuit Court U. S. Southern District of Illinois,
and Special Commissioner.

SPRINGFIELD, ILLINOIS, *June* 29, 1863.

Jyldtoctl.

And John Allen, of Old Saybrook, Middlesex County, Connecticut, and Aaron Arnold, of the city of New York, and Edwin L. Trowbridge, of the city of New York, bid for the property so offered the sum of four hundred thousand dollars ($400,000), and this being the highest and best bid made for said property so offered and enumerated, said John Allen, Aaron Arnold and Edwin L. Trowbridge became the purchasers thereof for the sum so bid as aforesaid.

He further reports that on the 18th day of February, A. D. 1864, he, together with the trustees, executed and delivered to said purchasers a deed for said premises, and that on the first day of October, A. D. 1863,

130 he took from Lucius Hopkins, one of the trustees, a receipt for the purchase money, the original of which is filed herewith and marked E, and made part of this report.

He further reports the following statement of the debt, interest, costs, &c.:

Decree rendered June 16, 1863, for		$1,419,666 00
Int. at 6% (per cent.) 107 days, from June 16, 1863, to October 1, 1863		24,969 50
Costs		484 61
Stamps		780 00
Account of trustees as per report filed, rendered with affidavit		15,392 45
		$1,461,292 56
Proceeds of sale		400,000 00
Balance due		$1,061,292 56

Respectfully submitted.
(Signed) A. CAMPBELL,
Master in Chancery.

(Endorsed:) Filed June 20, 1864. (Signed) P. P. Enos, clerk.

And afterwards, to wit, on the 24th day of June, A. D. 1864, the following proceedings were had in said court in said entitled cause and entered of record, to wit:

131 *Decree approving report of master.*

ALEXANDER STUDWELL, LUCIUS HOPKINS, AND George S. Cobb, trustees, &c.,
vs.
ILLINOIS RIVER RAILROAD COMPANY, ISAAC Vail, John Wear, and Leonard H. Wilkey. } Chancery.

The master in chancery having filed his report showing the default of the Illinois River Railroad Company, and all others, in paying the amount found due to the complainants as trustees under the decree rendered herein at the June term of this court, A. D. 1863, and further showing the sale of the property described in said decree in pursuance of said decree, the advertisements thereof, the manner and mode of the sale thereof, the property sold and the description thereof, the amount for which the property sold, the names of the purchasers and the execution of a deed thereof, and no exception being made or filed to said report, the same is approved, and said sale and deed executed as aforesaid is confirmed; and it appearing from said report that after
132 deducing the costs and expenses provided to be paid first out of the proceeds of said sale, and applying the balance of said proceeds upon the amounts of the decree as found by this court to be due the complainants upon account of the bonds mentioned in the pleadings herein, that there is a balance due upon said decree of the sum of one million and sixty-one thousand two hundred and ninety-two dollars and fifty-six cents, it is ordered by the court that the complainants, as trustees aforesaid, have judgment against the Illinois River Railroad Company for the said sum of one million and sixty-one thousand two hundred and ninety-two dollars and fifty-six cents, and that they have execution therefor as upon a judgment at law, and this cause is continued for further report herein.

And afterwards, to wit, on the 6th day of July, at the June term of court, in the year A. D. 1869, the following proceedings were had in said court and entered of record, to wit:

ALEXANDER STUDWELL, LUCIUS HOPKINS, and George S. Cobb, complainants,
vs.
THE ILLINOIS RIVER RAILROAD COMPANY et al.

133 On reading and filing the affidavit of Lucius Hopkins and Lebbeus Chapman, jr., from which it appears that Alexander Studwell, Lucius Hopkins, and George S. Cobb, the above-named complainants, have fully discharged all their duties as trustees under the mortgage or deed of trust executed by the above defendants, The Illinois River Railroad Company, to said complainants as trustees and dated November 1st, 1858, which said mortgage is mentioned and set forth in the bill of complaint in this cause; and it also appearing by said affidavits that said complainants have fully accounted for all the moneys received by them as such trustees; and it appearing from the proceedings in this cause that the bill of complaint therein was taken as confessed

by all of the defendants therein: on motion of said complainants, by their counsel, it is ordered, adjudged, and decreed, and this court doth order, adjudge, and decree that Alexander Studwell, Lucius Hopkins, and George S. Cobb, the above-named complainants, be and they are hereby forever discharged as trustees under the mortgage or deed of trust above and in the bill of complaint in this cause mentioned;
134 also that they, and each of them, be and they are forever discharged for all liability to account of the Illinois River Railroad Company, or to any corporation or corporations, or to any person or persons, for the proceeds of the foreclosure sale under the decree of foreclosure in this cause, or for any matter, cause, or thing growing out of or connected with the said mortgage or deed of trust, and that their said trust be, and the same is hereby, declared to be finally settled, adjusted, and closed.

Circuit court of the United States, southern district of Illinois, ss:

I, , clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete transcript of the papers filed and proceedings had on the chancery side of said circuit court in said entitled cause of Alexander Studwell, Lucius Hopkins, and George S. Cobb, complainants, vs. The Illinois River Railroad Company, Isaac Vail, John Wear, and Leonard H. Wilkey, defendants, and as truly and completely as the same are of record in my said office.
135 In testimony whereof I have hereunto set my hand and the seal of said circuit court at Springfield, in said district, this day of , in the year of our Lord one thousand eight hundred and seventy , and of our Independence the ninety-eighth year.

(Indorsed:) Filed January 2, 1874. J. A. Jones, clerk.

136 And then afterwards, to wit, on the said second day of January in the year aforesaid, there was issued out of the office of the clerk of said court a chancery subpœna in said cause, which said subpœna, together with the return of the marshal thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to the county of Morgan, Henry E. Dummer, The Peoria, Pekin and Jacksonville Railroad Company, and Isaac L. Morrison, greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of February next, to answer the bill of complaint of John Allen, Edwin L. Trowbridge, and Aaron Arnold, this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.
137 To the marshal of the southern district of Illinois to execute. Witness the Hon. Nathan Clifford, senior associate justice of

the Supreme Court of the United States of America, at Springfield aforesaid, this second day of January, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-eighth.

[L. S.] J. A. JONES,
Clerk.

MEMORANDUM.—The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court at Springfield aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

J. A. JONES,
Clerk.

I hereby appoint Thos. P. Stacy my special deputy to execute this writ.

Jan. 3, 1874.

E. R. ROE,
U. S. Marshal.

Executed this writ on the 10th day of January, A. D. 1874, by delivering true copies of the same to Harvey Devon, chairman of the board of supervisors of the within-named county of Morgan, Henry E. Dummer, Edward Higgins, freight agent of the within-named Peoria,
138 Pekin & Jacksonville Railroad (the president of said road not found in my district), and Isaac L. Morrison.

E. R. ROE,
U. S. Marshal,
By THOS. P. STACY,
Special Deputy.

(Endorsed:) Filed February 2d, A. D. 1874. J. A. Jones, clerk.

And afterwards, to wit, on the 2d day of February, in the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Order of court extending rule to answer.

JOHN ALLEN ET AL.
v.
COUNTY OF MORGAN. } In chancery.

On motion of defendant, by H. E. Dummer, esq., its solicitor, the rule to answer herein is extended to the first Monday of April next.

And afterwards, to wit, on the 24 day of March, in the year last aforesaid, came said parties and filed in the office of said court their agreement in said cause, which said agreement is in the words and figures following, to wit:

Agreement as to filing answer.

OFFICE OF DEARBORN & CAMPBELL, ATTORNEYS AT LAW,
139 *Havanna, Mason Co., Ill., March* 24, 1874.

Hon. H. E. DUMMER:

D. SIR: From the intimation of Judge Treat we have no doubt but

what he would extend the time to answer in the case of Arnold et al. vs. Morgan Co., in the U. S. ct., until our sup. ct. has decided the case. You need not, therefore, file your answer until after the opinion of the supreme court has been announced.

With regard to the depositions in the school case, we have written to Roberts & Green, who are our associates in the case, and if the time suits them it will us. Will advise you when we hear from them.

Respectfully yours, &c.,

DEARBORN & CAMPBELL.

(Endorsed:)

Ask Judge Treat extend rule to answer to, say, 15th June, 1874, by which date the opinion of s. court touching M. Co. bonds will be filed.

J. T. SPRINGER.
H. E. DUMMER.

(Also endorsed:) Filed March 26, 1874. J. A. Jones, cl'k.

And afterwards, to wit, on Thursday, the said 26th day of March, at the January term of said court, in the year aforesaid, the following further proceedings were had in said court in said entitled cause, and entered of record, to wit:

140

Order of court extending time to answer.

JOHN ALLEN ET AL. }
v. } In chancery.
COUNTY OF MORGAN. }

By agreement on file the rule to answer herein is extended until the 15th day of June next.

And afterwards, to wit, on Thursday, the 1st day of July, at the June term of said court, in the year of our Lord eighteen hundred and seventy-five, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order of court granting leave to answer.

JOHN ALLEN ET AL. }
v.
COUNTY OF MORGAN. }

On motion of defendant, by H. E. Dummer, esq., its solicitor, leave is granted it to answer herein by the first Monday of September next.

And afterwards, to wit, on the 13th day of August, in the year last aforesaid, came said defendants and filed in the office of the clerk of said court his demurrer herein, which said demurrer is in the words and figures following, to wit:

141 *Demurrer to bill.*

UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of Illinois.
Of the 1st Monday of September, 1875.

JOHN ALLEN, EDWIN F. TROWBRIDGE, AND Aaron Arnold, plaintiff,
vs.
THE COUNTY OF MORGAN AND HENRY E. Dummer, impleaded with the Peoria, Pekin & Jacksonville Railroad Company & Isaac L. Morrison, defendants. } Bill in chancery.

The joint and several demurrer of the county of Morgan & Henry E. Dummer to the bill of plaintiffs above named.

These defendants, by protestation, not confessing all or any of the matters and things in the plaintiffs' bill of complaint contained to be true in such manner & form as the same is therein set forth and alleged, do demur to said bill, and for cause of demurrer show—

1st. That the plaintiffs have not made or stated such a case as entitles them to a decree, because it does not appear by any of the allegations of said bill that the plaintiffs are the holders of any of the bonds of the said Illinois River Railroad Company, or are creditors to judg-
142 ment or otherwise of the said Illinois River Railroad Company.

2d. That said bill doth not contain any matter of equity, whereon this court can ground any decree or give to the plaintiffs any relief against the defendants or either of them. Wherefore, & for divers other good causes of demurrer, the defendants do demur to said bill of complaint, & respectfully demand the judgment of the court whether they shall be compelled to make any further answer to the said bill, & pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

J. T. SPRINGER AND
DUMMER & BROWN,
Solicitors for Morgan County.

H. E. DUMMER, *pro se.*

(Endorsed:) Filed August 13th, A. D. 1875. J. A. Jones, clerk.

And afterwards, to wit, on the 6th day of September, in the year last aforesaid, came said Henry E. Dummer and filed in the office of the clerk of said court his separate answer in said cause, which said separate answer is in the words and figures following, to wit:

Answer of Dummer.

UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of Illinois.

143 JOHN ALLEN, EDWIN F. TROWBRIDGE, and Aaron Arnold, complainants,
vs.
MORGAN COUNTY, PEORIA, PEKIN AND JACKSONVILLE Railroad Company, Isaac L. Morrison, and Henry E. Dummer. } Creditors' bill.

The separate answer of Henry E. Dummer to the bill of complaint.

This defendant now & at all times hereafter, saving to himself all & all manner of benefit or advantage of exception that may or can be taken to the many errors in said bill contained, for answer thereto, or to so much thereof as defendant is advised it is material or necessary for this defendant to answer to, answering, saith that he adopts the answer of his co-defendant, Morgan County, & upon information and belief, avers, denies, admits, & avoids, as his said co-defendant Morgan County, in its said answer, reference being had thereto, avers, denies, admits, and avoids.

And now this defendant, further answering to so much of complainants' bill as affects him personally, says that he was the solicitor of complainants in the suit of Blair et al. against Morgan County et al., though for some of said complainants other solicitors, not resi-
144 dents of Morgan County, were associated with him. This suit of Blair and others vs. M. County, was a creditors' bill, the object of which was to subject the said Morgan County bonds, as assets of the Illinois River Railroad Company, to the payment of claims of said creditors against said Ill. River R. Company. This suit was pending at the November term, 1867 (it being, as this defendant best recollects, a special term), of the Morgan County circuit court. It was then understood that Messrs. Studwell, Hopkins & Cobb, trustees for the holders of the bonds of the Illinois River R. Company, had commenced or were about to commence a suit in this court by a creditors' bill, to subject the said Morgan County bonds, as assets of the Ill. R. R. Company, to the payment of some sum exceeding one million of dollars alleged to be due said trustees for the use of the holders of the bonds of the Ill. River R. Company. This defendant communicated to his clients & the solicitors of such clients as were represented by other solicitors, the situation of the case of Blair et al. vs. M. County et al., & the imminent danger that said trustees, Studwell, Hopkins & Cobb, might become parties complainants in said suit of Blair et al., & so take by reason of the magnitude of their claim, substantially all the proceeds of the assets of the Ill. R. R. Company, consisting of the Morgan County bonds.

145 This defendant was then authorized by his said clients & such other solicitors as were interested in the matter to make the best compromise he could with Morgan County & have the suit disposed of at the said November term, 1867.

A negotiation was commenced with Morgan County, through its then county judge and Isaac L. Morrison, the solicitor of Morgan County, or one of them, which was protracted until near the end of the said November term, 1867, and finally resulted in a compromise, was that

Morgan County should pay said creditors, complainants in said suit of Blair et al., twelve thousand dollars, viz: Six thousand dollars in M. Co. bonds of the series issued originally to the Ill. R. R. Co. & six thousand dollars in money, said bonds being then worth, as shown by sales, from 60 to 65 cents on the dollar, and in consideration of this payment the said creditors were to turn over to Morgan County their claims as paid in full, & pay the costs of the Blair suit. It was also agreed that William Thomas, who claimed $4,000 of the M. Co. bonds, should be allowed to come in for a pro rata share of the $12,000, upon the same terms as the other creditors, if he would consent to do so, and if he did not consent, that the twelve thousand dollars should be distributed pro rata among the other creditors, the complainants in the said suit of Blair et al. vs. M. County et al. The stipulation set out in the com-
146 plainants' bill, signed by this defendant as solicitor, is genuine, but does not contain all of the final terms of said compromise as agreed on. This defendant, further answering, saith it was part of said compromise that the said suit of Blair et al. v. M. County et al. should be disposed of at said November term, 1867. And this defendant avers that said compromise was carried out & executed: that said case was disposed of by the Morgan circuit court, in open court, in the same manner as is usual where the facts and decree are agreed on, resulting in the decree hereinbefore made an exhibit.

This defendant, further answering, saith that the six thousand dollars in bonds & six thousand dollars in money were paid under said decree.

And this defendant, further answering, saith that he notified Mr. William Thomas repeatedly of his right to share pro rata in the proceeds of said twelve thousand dollars with the said creditors plaintiffs in the case of Blair et al., upon the same terms said creditors was to share: that is, in liquidation of his claim; & the distribution of said proceeds was delayed for some time to enable Mr. Thomas to exercise his option: and this defendant avers that Mr. William Thomas declined to receive any part of said sum of twelve thousand dollars, & gave this defendant a formal written notice that he refused to receive
147 any part of the same.

And this defendant avers that after deducting an agreed compensation, the whole of said sum of twelve thousand dollars was paid out to said creditors in person, or through their solicitors, in the winter of 1867–1868, and no part of said twelve thousand dollars has been in the possession or under the control of this defendant since that time.

This defendant, further answering, denies so much of complainants' bill as charges that more than six thousand dollars in bonds were delivered under the decree in the case of Blair et al. vs. M. Co. et al.; & defendant avers that the bonds delivered by the county, twelve in number only, were delivered in the last part of November, 1867, or the first of December, 1867, & that from all of said bonds, when delivered, all the coupons maturing previous to March, 1868, had been detached, and thus defendant further avers that no coupons were delivered for said creditors, or otherwise, except the coupons attached to said bonds & maturing March, 1868, & thereafter.

All of which matters and things this defendant is ready & willing to aver, maintain, & prove as this honorable court may direct: & defendant prays that he may be hence dismissed with his reasonable costs & charges in this behalf most unjustly sustained.

H. E. DUMMER, *Pro Se.*

148 (Endorsed:) Filed Sept. 6th, A. D. 1875. J. A. Jones, clerk.

And afterwards, to wit, on the 6th day of September, in the year last aforesaid, came said county of Morgan and filed in the office of the clerk of said court its separate answer and exhibits thereto in said cause, which said separate answer and exhibits are in the words and figures following, to wit:

Separate answer of the county of Morgan.

UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of Illinois.

JOHN ALLEN, EDWIN F. TROWBRIDGE, AND Aaron Arnold, complainants,
vs.
MORGAN COUNTY, PEORIA, PEKIN AND JACKSONVILLE Railroad Company, Isaac L. Morrison, and Henry E. Dummer, defendants.
} Creditors' bill.

The separate answer of the county of Morgan to the bill of complainants.

This defendant, Morgan County, now & at all times hereafter,
149 saving to itself all and all manner of benefit or advantage of exception that can or may be taken to the many errors, uncertainties, & imperfection in the said bill contained, for answer thereto, answering saith, that it has no personal knowledge of the residence of the complainants, but for the purposes of this suit such allegations as to the residence of the complainants are admitted to be true.

And your respondent, further answering admits it to be true that previous to the year 1857 the Illinois River R. Company was duly incorporated under an act of the general assembly of the State of Illinois, & that under such charter said company was organized to proceed to construct its road, & succeeded so far as to construct its road from Pekin, in Tazewell County, Illinois, to Virginia, in Cass Co., Illinois, when said company (the Ill. R. R. Co.) became insolvent; that the said charter authorized the building of a road to Jacksonville, in Morgan County, Illinois, which was the southern terminus of said road, but beyond certain surveys no work was done by said company on its road in Morgan County, and your respondent avers that the charter of said Illinois River Railroad Company by its terms expired on the 11th day of February, 1863.

Your respondent, further answering, says that said Illinois
150 River Railroad Company was authorized by its charter to receive subscriptions to its capital stock to aid in the construction of its road; that under such authority the county of Morgan subscribed fifty thousand dollars to the capital stock of said company, the original contract of subscription being in words and figures following, to wit:

We, the subscribers, citizens of Morgan County, hereby subscribe to the capital stock of the Illinois River Railroad Company the number & shares set opposite to our respective names (one hundred dollars being a share), our said subscriptions to be subject to such rules and regulations as may from time to time be made by the directors of said company:

Subscriber's names.	No. of shares.	Am't subscribed.	Am't paid.
The county of Morgan, by Jas. Berdan, county judge, duly authorized by the county court of said county.	500 shares.	$50 000	

And your respondent further avers that by authority of law the said Illinois River Railroad Company, by its president, R. S. Thomas, & the county of Morgan through its county court, to wit, on the 10th day of September, agreed that in payment of said subscription bonds of said county of Morgan having twenty years to run, and bearing six per cent. interest per annum, payable to the Illinois River R. Co., should be issued at once; but that the same should not nor should any part of
151 them be paid out or delivered to said company except in payment for work done by said company on its road within the limits of Morgan County. Your respondent avers that said railroad company by its president filed with said county court of Morgan County a written statement, the original of which is in words & figures following, to wit:

STATE OF ILLINOIS,
Morgan County:

I, R. S. Thomas, president of the Illinois River Railroad Company, certify that that portion of said railroad situated north of the town of Virginia, in said county, is now in process of construction, & the portion of said road between Jacksonville & Virginia is under contract to be completed by the first day of December, 1858, & that it is provided in the contract for the construction of said road that the Morgan County bonds shall be expended for work done in Morgan County & not elsewhere.

(Signed) R. S. THOMAS,
Pres. of I. R. R. R. Co.

And on said 10 Sept., 1857, the county court made the order set forth in Exhibit 1, herewith filed and made part of this answer, and your respondent further avers that in pursuance of said agreement made as aforesaid, to wit, on said 10th September, 1857, the county of Morgan deposited with Messrs. Elliott & Brown, bankers, at Jacksonville,
152 Illinois, fifty thousand dollars of Morgan County bonds of the character and description above set forth, & (simultaneously) the said *said* company deposited with Messrs. Elliott & Brown a certificate of stock for 500 shares in the capital stock of said company, said bonds & certificate of stock to be subject to the condition agreed on as aforesaid, that is to say, that no part of said bonds should be paid out or delivered to said company, on assessments or otherwise, but only in payment for work done on the Illinois River Railroad lying within the limits of Morgan County.

Your respondent further avers that said Morgan County bonds so deposited remained (subject to the slight qualifications hereinafter mentioned) in the hands of said depositaries, Messrs. Elliott & Brown, until the 28th day of February, 1863, when, having been sued as garnishees of said Illinois River Railroad Company, and having been threatened with other suits as garnishees of said company, on account of said bonds, Messrs. Elliott & Brown filed their bill of interpleader against the Illinois River Railroad Company, Morgan County, Alexander Studwell, Lucius Hopkins, George T. Cobb, trustees in the trust deed executed

by the Illinois River Railroad Company to secure the holders of its bonds, Richard S. Thomas, William Thomas, Joseph Ladd, & Isaac
153 Vail, which resulted first in a decree granting the prayer of the said Elliott & Brown, relieving them of the custody of said bonds, & finally in a decree on the cross-bills of R. S. Thomas, William Thomas, Joseph Ladd, & Isaac Vail, directing the payment of the claims of said Ladd & Vail, & dismissing the cross-bills of R. S. Thomas & William Thomas, with the further order that the bonds remaining after the payment of the claims of Ladd & Vail should be deposited with Messrs. M. P. Ayer & Co. Your respondent files herewith copies of said decrees, marked Exhibits 2 & 3, & makes the same part of this answer: and your respondent also files herewith a copy of the joint answer of Messrs. Studwell, Hopkins and Cobb, trustees of the holders of the bonds issued by said Illinois River Railroad Company, admitting in substance their knowledge & acquiescence in the arrangement hereinbefore set forth, that said Morgan County bonds should be used only for payment of work done in Morgan County, marked Exhibit 4, & made part of this answer.

Your respondent avers that of said bonds $17,500.00 in nominal amount was applied to the payment of the judgments in favor of said Ladd & Vail & the sum of two hundred dollars was applied to the payment of the legal expenses of said Elliott & Brown: and your re-
154 spondent further avers that so far as respects the rate at which said bonds were retired, the transaction was just and fair, & your respondent denies all the allegations of complainants' bill, to the contrary: and your respondent further avers that there was expended in & about the defence of said suit a large sum of money, to wit, the sum of three thousand dollars.

And your respondent further answering says that afterwards, to wit, at the term of the Morgan County circuit court, a suit was instituted by James Blair & others, creditors of the Illinois River Railroad Company, asking to have the said Morgan County bonds remaining unexpended applied to the payment of their claims against said company, and such proceedings were had in said suit that afterwards, to wit, at the term, 1867, of the Morgan circuit court, a decree was rendered directing the application of said bonds to the payment of the claims of said creditors of the Ill. R. R. Co., a copy of which decree is herewith filed, marked Exhibit 5, & made part of this answer; and your respondent avers that under said decree sixty-five Morgan County bonds, $32,500 in nominal amount, being bonds numbered from No. 1 to No. 7 inclusive, & from No. 43 to No. 100 inclusive, were paid
155 out by the special master appointed to execute said decree to the complainants in said suit of Blair et al. vs. Morgan County et al., as will more fully appear by the report of said special master, a copy of which is herewith filed marked Exhibit No. 6, & made part of this answer.

Your respondent, further answering, says that previous to the rendition of said decree the county of Morgan & the complainants negotiated as the disposition of the suit of Blair et al. vs. Morgan County et al., the creditors plaintiffs in said suit being desirous of disposing of the suit at the November term, 1867, the court being then in session. The stipulation set out in complainants' bill was made as the result of such negotiation but does not express all the agreements made. The case was then disposed of as an agreed case by the court, it being stated to the court by the respective counsel that the facts were agreed to, & that the decree was satisfactory to both sides: under this decree the county of Morgan paid to the said complainant' six thousand dollars in money & six thousand dollars in bonds, to wit, bonds of the series

above mentioned from No. 1 to No 7 inclusive, and from No. 55 to No. 69 inclusive, the county of Morgan retaining in its custody the balance of said series of bonds, being fifty-three in number, it being the
156 intent & purpose of said agreement that said creditors should transfer & surrender to the county of Morgan all their claims & receive from the said county of Morgan in bonds & money the said sum of twelve thousand dollars, which agreement was executed and consummated as aforesaid. Your respondent, further answering, avers that the claims of the said creditors, so bought in by the said county of Morgan, were bona fide claims against the Illinois River Railroad Company, and your respondent denies the truth of these allegations of the bill as to the disposition of the suit of Blair et al. v. Morgan County other & different from the statements of respondent above set forth.

And your respondent, in order to present the further history of the disposition of said bonds, avers that said bonds, fifty-three in number, were put in charge of the clerk of the Morgan County court; that subsequently thirteen of said bonds were cancelled and destroyed by an order of the Morgan County court, and the remaining forty bonds came into the possession of John Allen, one of the complainants, on the claim that they were donated to him by the county court of Morgan County; and your respondent, claiming that said bonds came to
157 the hands of Mr. Allen without authority of law & without consideration, instituted a suit against said Allen & others, & and such proceedings were had that a decree was made directing the restoration of said bonds to your respondent, subject to certain claims of William Thomas, M. H. L. Schooley, & Benj. West, a copy of which decree is herewith filed marked Exhibit 7, & made part of this answer.

Your respondent in response to the claim that the county of Morgan has by the payment of interest on said bonds recognized its obligation to pay the same, saith that it is true that some money was paid to the Illinois River Railroad Company while said bonds were in the possession of said depositions, Messrs. Elliott & Brown, as above set forth; but your respondent avers that such payment was paid for surveys made by the Ill. R. R. Company in the county of Morgan in connection with the location of its road within the limits of Morgan County, & such payment was therefore consistent with the agreement above set forth, that no part of said bonds were to be paid except for work done on said road in Morgan County; and your respondent denies that it has ever paid interest on said bonds under circumstances & to persons that can bar the respondent from insisting, as respondent does now insist, that it
158 is not bound to pay any part of the bonds originally deposited with Messrs. Elliott & Brown on the condition above set forth.

Your respondent, further answering, saith it is true upon information & belief that the Illinois River Railroad Company issued its coupon bonds bearing six per cent. interest per annum to the amount of one million and twenty thousand dollars, dated the day of , 18 , & having twenty years to run, which bonds, as your respondent is informed & believes, were sold & delivered to one Alexander Studwell in payment for iron & equipment for its railroad; and your respondent denies that the complainants are the owners at this time or that they were the owners at the commencement of this suit of the said bonds issued as aforesaid by the said Illinois River Railroad Company or any of them.

And your respondent further answering, upon information & belief, admits it to be true that the Illinois River Railroad Company, for the purpose of securing said railroad bonds, executed & delivered to Alex

ander Studwell, Lucius Hopkins, and George T. Cobb a trust-deed conveyance, all its railroad property & appurtenances & rolling stock (not including, however, any subscriptions of stock), & said trust
159 deed, as respondent is informed and verily believes, was duly acknowledged and recorded.

Your respondent further answering admits that when the Illinois River Railroad became insolvent, the road with its appurtenances & equipment was turned over to said trustees, Studwell, Hopkins, & Cobb, who for some time operated said road as trustees.

And your respondent further answering says it has been informed that it is true that the Illinois River Railroad Company failed to pay interest on its bonds, & that upon such default the said Studwell, Hopkins, & Cobb, trustees of the holders of the bonds of said company, instituted a suit to foreclose said trust-deed, & at the term of the circuit court of the United States for the southern district of Illinois obtained a decree of foreclosure of said trust; that a sale took place under said decree, & that the complainants were the purchasers of the Illinois River Railroad with the other property specified in said trust-deed; but inasmuch as your respondent is (not) accurately informed upon these matters your respondents not admitting or denying the allegations in complainants' bill upon these points requires that the same
160 shall be fully proven. And your respondent further answering says that as to the allegation that the said Studwell, Hopkins & Cobb, trustees as aforesaid, obtained a judgment against the Illinois River Railroad Company in the circuit court of the United States for the southern district of Illinois, at its term, 186 , for $, your respondent is not sufficiently advised to admit or deny the same, & therefore requires that the same shall be proven; but your respondent upon information & belief says that none of the railroad bonds issued by the Illinois River Railroad Company have ever been filed in said court as the basis of said decree and alleged judgment.

Your respondent has been informed that the complainants having purchased the property mentioned in said trust-deed procured an act of incorporation from the general assembly of the State of Illinois for a new railroad company, & an organization of the same having taken place conveyed the property so purchased to said new corporation, known as the Peoria, Pekin and Jacksonville Railroad Company, but is not sufficiently informed to admit or deny the same, and therefore, so far
161 as such matters are material, requires that the same shall be proven.

Your respondent further answering saith that it believes it to be true that the complainants were not nominal parties to any of the suits hereinbefore mentioned, whether instituted in the circuit court of the U. S. for the S. dist. of Illinois or the circuit court of Morgan County, Illinois; but your respondent avers that Messrs. Studwell, Hopkins, and Cobb, trustees, for the bondholders, were parties to all of said suits.

And your respondent further answering states that the said complainants, who your respondent is advised are the stockholders & owners of the corporation known as the Peoria, Pekin & Jacksonville Railroad Company, proceeded to build the extension of the said road (previously known as the Illinois River Railroad Company) from Virginia, Cass County, Illinois, to Jacksonville, Morgan County, Illinois, and said complainants, acting by and through said complainant, John Allen, applied to the said city of Jacksonville, in Morgan County, to subscribe fifty thousand dollars to the capital stock of the said new corporation known as the Peoria, Pekin & Jacksonville Railroad Company upon the

162 ground that the bonds of the county of Morgan originally subscribed to the capital stock of the Illinois River Railroad Company could not be used, & that the citizens of Morgan County aforesaid were not liable to pay the same, and upon such ground the said city of Jacksonville, in Morgan County, subscribed fifty thousand dollars to the capital stock of the Peoria, Pekin and Jacksonville Railroad Company, which sum was subsequently paid to said P., P. & J. R. Co., through its president, complainant John Allen.

Your respondent therefore claims among other defenses—

First. That the complainants are not the holders of the bonds of the Illinois River Railroad Company, & that therefore their bill should be dismissed.

Second. That if complainants are the owners & holders of any of said bonds of the Illinois River R. Company, the Morgan County bonds should not be applied to the payment of whatever may be due & unpaid on said railroad bonds, because the said county bonds were by the agreement of parties to the Morgan County subscription, competent to contract, only to be paid upon work in Morgan County, which was never done, & the trustees of said bondholders had knowledge of and

163 acquiesced in the said agreement.

Third. The claims of the complainants are barred by the decrees rendered by the Morgan County circuit court, set forth in the foregoing answer, to which said trustees for the bondholders were parties.

Fourth. The bonds of Morgan County—$50,000_{\frac{00}{100}}$ in am't—originally issued to the Illinois River R. Company, & deposited with Messrs. Elliott & Brown, have all been paid out legally in liquidation of claims of creditors of the Ill. R. R. Co., as Morgan County not being a trustee or acting in a fiduciary capacity had a right to buy in the claims of said creditors at a discount.

And this defendant denies all other matters & things in the said bill of complaint contained, material or necessary for this defendant to make answer unto that are not herein well & sufficiently answered, confessed, traversed, & avoided or denied, and the matters and things in this defendant's answer contained, this defendant is ready & willing to aver, maintain, & prove as this honorable court may direct, & defendant prays that it may be hence dismissed with its reasonable costs & charges in this behalf most unjustly sustained.

THE COUNTY OF MORGAN.
By J. T. SPRINGER AND
DUMMER & BROWN.

J. T. SPRINGER,
DUMMER & BROWN,
Solicitors for Morgan County.

164 (Endorsed:) Filed Sept. 6th, A. D. 1875. J. A. Jones, cl'k.

Exhibit No. 1 to answer of Morgan Co.

EXHIBIT No. 1.

At the September term of the county court of Morgan, for the county of Morgan, and State of Illinois, begun and held at the court house in the town of Jacksonville on Monday, the first day of September, 1856, it being the first Monday in the month, sitting for the transaction of county business.

Present, Hon. James Berdan: J. R. Bennett, county judge; J. B. Duncan, associate.

And on the seventh day of said term, present as above, the following proceedings was had, to wit, among other things:

And whereas the Illinois River Railroad Company has actually undertaken and is now proceeding with the construction of said last mentioned railroad, as extended from Pekin, in Tazewell County, to Virginia, in Cass County, and R. S. Thomas, the president of said company, having certified to this court that said last mentioned company have placed their said railroad under contract to be completed by the 1st day of December, 1858, from Virginia, in Cass County, to Jacksonville, in Morgan County, and that is provided in the contract for the construc-
165 tion thereof that the Morgan County bonds shall be expended for work done in Morgan County and not elsewhere, and this court being satisfied that the interest and advantage of this county will be promoted by the delivery to the last mentioned company as hereinafter provided of the bonds heretobefore subscribed by the county to the capital stock of said company, it is ordered that there be delivered to the said Illinois River Railroad Company the amount of $50,000 in $100 bonds of this county of this date, No. 1 to 100, payable to said company, each bond being for $500, redeemable at the American Exchange Bank in the city of New York, for the 1st day of March, A. D. 1877, each of said mentioned bonds to have coupons or interest warrants attached thereto for interest, payable annually from and after 1st of March next, at 6 per cent. per annum.

(Endorsed:) Filed Sept. 6th, 1875. J. A. Jones, clerk.

EXHIBIT No. 2.

At a regular term of the circuit court of the county of and State of Illinois, begun and held at the court house in said county and State, on the 28th day of September, A. D. one thousand eight hundred and sixty-three, there being present as follows, to wit, the
166 Hon. D. M. Woodson, judge of circuit, clerk, , sheriff.

And among other proceedings of the said court are found the following, to wit:

On the 10th day of October, A. D. 1863, it being one of the regular term days of said September term, A. D. 1863.

EDWARD R. ELLIOTT, WILLIAM BROWN
vs.
THE COUNTY OF MORGAN, THE ILLINOIS RIVER Railroad Company, Alexander Studwell, Lucius Hopkins, George T. Cobb, Richard L. Thomas, William Thomas, Isaac Vail, Joseph Ladd.

On this eighth day of October, A. D. 1863, and during the September term of this court for the year aforesaid, came the said complainants and defendants by their solicitors, and this cause as to the issues formed between the said complainants and defendants by their solicitors, and this cause as to the issues formed between the said complainants and defendants is heard upon the bill of complainants, the exhibits therein mentioned, the answers of the defendants, the exhibits therein mentioned, the replication to the answers of the county of Morgan, William Thomas, Alexander Studwell, Lucius

Hopkins, George T. Cobb, and the written stipulation in said cause signed by their solicitors for the parties whose answers have been replied to as above stated, and the court being satisfied of the truth of the matters set forth in the complainants' bill, and that the complainants are entitled to the said decree and relief therein prayed for orders and decrees that said complainants, after deducting and reserving two hundred dollars in interest warrants on the proceeds thereof from the Morgan County bonds, and interest warrants stated in their bill to be held by them at the time of filing said bill, deposit the remainder of said bonds and warrants and the proceeds thereof, for safe-keeping, with M. P. Ayers & Co., bankers of Jacksonville, Illinois, to be by them held subject to the future orders of this court, and that said complainants file in this cause the receipt of said M. P. Ayers & Co. for bonds, warrants and proceeds. By consent of the solicitors of said defendants it is further ordered that the answers and interpleaders heretofore filed in this cause stand and be considered a bill of interpleader therein, with leave to any of said defendants to amend the same, or file original and cross-bills in said cause within ninety days from this date, and that without further formal pleadings, excepting so far as the same may be rendered necessary by bills and cross-bills hereafter filed for the
168 purpose of determining the respective rights of said defendants as against each other, be considered at issue upon said interpleaders, and that said defendants, excepting so far as the matters in their interpleader or other pleadings have been or may be admitted, proceed, after giving due notice, to take proofs of the same for hearing at the next term of this court.

It is further ordered and decreed that said defendants and each and all of them be perpetually enjoined from all further proceeding in all actions and suits heretofore instituted by them against said complainants or either of them for the above mentioned Morgan County bonds, and interest warrants, or any of them, or for the proceeds of the same or any of them, or for any interest therein, or for any pretended indebtedness or liability of said complainants or either of them for or on account of being, or having been the holders and depositaries of said bonds and interest warrants, or of any of the proceeds thereof.

Said defendants, and each and all of them, are also perpetually enjoined from hereafter instituting any suit or suits, actions or proceedings against said complainants or either of them, for said Morgan County bonds and interest warrants, or any of them or any interest therein, or any proceeds thereof, or for or on account of any pretended indebtedness, liability, or responsibility of said complainants or either of
169 them, by reason of their having been the holders and depositaries of said bonds and interest warrants or any of the proceeds thereof.

It is further ordered that this suit be hereafter docketed in the name and title of Richard S. Thomas vs. The county of Morgan, The Illinois River Railroad Company, Alexander Studwell, Lucius Hopkins, George T. Cobb, William Thomas, Isaac Vail, and Joseph Ladd.

It is further ordered that said complainants, Edward R. Elliott and William Brown, do have and retain the two hundred dollars to be deducted and reserved by them out of the afor'said interest warrants, or their proceeds, as above stated, in satisfaction for their costs, charges, expenses and solicitors' fees in this suit, &c.

STATE OF ILLINOIS,
Morgan County, ss:

I, Joseph W. Caldwell, clerk of the circuit court within and for the

said county and State aforesaid, do certify that the foregoing is a true and correct copy of the decree rendered in the above entitled cause, and is recorded in this office in chancery record No. E, on page 372 & 373.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said circuit court at Jacksonville, in said county, this 3d day of September, A. D. 1875.

[L. S.] JOS. W. CALDWELL, *Clerk.*

(Indorsed:) Filed Sept. 6th, A. D. 1875. J. A. Jones, clerk.

170 EXHIBIT No. 3.

At a regular term of the circuit court of the county of Morgan and State of Illinois, begun and held at Jacksonville, in said county and State, on the 25th day of September, A. D. one thousand eight hundred and sixty-five, there being present as follows, to wit, the Hon. D. M. Woodson, judge; , clerk; , sheriff.

And among other proceedings of the said court are found the following, entered of record on the 13th day of October, A. D. 1865, said day being one of the regular days of the aforesaid September term, A. D. 1865, of said court, to wit:

RICHARD S. THOMAS *vs.* MORGAN COUNTY ET ALS. } In chancery.

And now, on this day came the parties to this suit by their solicitors, and this cause coming on to be heard upon bill of complaint of Brown & Elliott, & Illinois River Railroad Company, the county of Morgan,
171 Alexander Studwell, Lucius Hopkins, George T. Cobb, Richard S. Thomas, William Thomas, Joseph Ladd, and Isaac Vail, with Exhibits A, B, C, D, & E filed with said bill; the answer of Morgan County, and Exhibit A thereto attached; the answer of William Thomas the answer & bill of interpleader of Studwell, Hopkins & Cobb, and Exhibit A therewith filed; the joint answer of Illinois River Railroad Company and Richard S. Thomas; the answer of Isaac Vail; replication to answer of William Thomas; replication to answer of Morgan County; decree to Elliott & Brown; the amended answer of Morgan County; amendment to joint answer of Illinois River Railroad Company and Richard S. Thomas; amendment to answer of Isaac Vail; the cross-bill of Joseph Ladd; the cross-bill of Isaac Vail; the cross-bill of Richard S. Thomas; cross-bill of Illinois River Railroad Company; cross-bill of Morgan County; answer of William Thomas to cross-bill of Morgan County; stipulation setting case for trial; amendment to cross-bill of Joseph Ladd; amendment to cross bill of
172 Isaac Vail; the joint and several answer of Richard Thomas, Isaac Vail, and the Illinois River Railroad Company to cross-bill of Morgan County, and Exhibits O, P, S, & T filed with said answer; the record of proceedings had in the circuit court of Peoria County, in the suit of Joseph Ladd against the Illinois River Railroad Company; evidence agreed on by stipulation; the original contract for stock; orders of Morgan County court; oral testimony; certificate of R. S. Thomas; certificate of railroad stock, the letter including same & order of Illinois River Railroad Company; deposition of Elliott & Brown; copy

Morgan County bond contract of Allen & McGrady; record of proceedings in suit of Isaac Vail against Illinois River Railroad Company in Mason County circuit court; record of proceedings of Illinois River Railroad Company; the order of Illinois River Railroad Company on William Brown for Morgan County bonds, and Brown's refusal to comply with said order; declaration of forfeiture of contract of Allen & McGrady; power of attorney to William Thomas to vote for Morgan County at election of directors of Illinois River Railroad Company;
173 letter of Lucius Hopkins to William Thomas, and stipulation of Studwell & Hopkins, trustees of Illinois River Railroad Company, that the right to Morgan County bonds shall be tried in the Morgan County circuit court in pending suit;

And the court being sufficiently advised of and concerning the premises, it is ordered and adjudged by the court in this case that the bill of interpleader and cross-bills of Richard S. Thomas, William Thomas, Isaac Vail, Joseph Ladd, The Illinois River Railroad Company, and Alexander Studwell, Lucius Hopkins, and George T. Colb, trustees, &c., be and they are each dismissed, and that the several parties above named taking nothing by their respective bills of interpleader and cross-bills in this case.

And it is further ordered by the court that the papers deposited in custody of M. P. Ayers & Co., under an interlocutory order made in this case called Morgan County bonds, remain in custody of M. P. Ayers & Co.

And thereupon came all the parties interpleading except Morgan County, & severally prayed an appeal to the supreme court, which is granted upon the condition that one bond in the penal sum of
174 five hundred dollars, to be executed by Richard S. Thomas & William Thomas, be filed within fifty days from and after the last day of the present term of this court, and by consent no other appeal bond is required to perfect an appeal as to all the parties praying an appeal; that one record only is to be filed in the supreme court, & each party may assign errors on that record.

STATE OF ILLINOIS,
Morgan County, ss:

I, John N. Marsh, clerk of the circuit court within and for the said county and State aforesaid, do certify that the foregoing is a true and correct copy of the decree rendered in the above entit'ed cause, and is recorded in this office in chancery record F, on page 4.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court at Jacksonville, in said county, this 1st day of October, A. D. 1877.

[SEAL.] JNO. N. MARSH, *Clerk.*

175 At a special term of the circuit court of the county of Morgan and State of Illinois, begun and held at Jacksonville, in said county and State, on the 28th day of May, A. D. one thousand eight hundred and sixty-six, there being present as follows, to wit, the Hon. D. M. Woodson, judge; , clerk; , sheriff.

And among other proceedings of the said court are found the following: Entered of record on the 28th day of May, A. D. 1877, being one of the regular days of said special May term, A. D. 1866, of said court, to wit:

Circuit court of Morgan County, State of Illinois. May special term, 1866.

HENRY S. THOMAS, ADM'R, &C., OF THE ESTATE of Richard S. Thomas, dec'd,
vs.
MORGAN COUNTY ET ALS.
} In chancery.

And now, on this 28th day of May, A. D. 1866, came Isaac Vail, by his solicitor, Henry E. Dummer, and Wm. M. Dodge, adm's of, &c.,
176 of the estate of Joseph Ladd, dec., by his solicitor, H. B. McClure, and filed in this case the final order of supreme court of the State of Illinois, made in this, at the January term thereof, 1866, reversing the decree rendered in this case as to the said Vail and *and* Dodge, adm's, and remanding the case for a decree in this case in pursuance to the directions in the opinion of the said supreme court, and the said Morgan County appearing by her solicitors, and this cause coming on for final hearing, and it appearing to the court that there is due to the said Dodge, adm's, &c., from the said Illinois River Railroad Co., on said judgment the principal am't of $1,567.38, and for interest, 3 years 6½ mo., at 6 per cent. the sum of $333.06, and for costs expended $12.75, making due him from said railroad co. $1,913.19; and it also appearing that there is due to the said Isaac Vail from said railroad company the principal amount of said judgment, $4,180.18, with interest at six per cent. from October 22, 1862, three years and 7 mos., $898.73, and for costs expended in said said case, $16.00, making in all the sum of
177 $5,094.91; and this cause coming to be heard upon the question of the marketable value of said bonds referred to in the said opinion of the said supreme court and in this case, and the court having heard the evidence of witnesses taken in open court, find from the same that the marketable value of said bonds is forty cents to the dollar in the par value of the same.

It is therefore ordered and decreed by the court, by consent of the said Isaac Vail and the said William M. Dodge, adm's, &c., and also by the said Morgan County, that the said county pay to the said William M. Dodge, adm's, &c., or his solicitor for him, the said sum of $1,913.19, in cash, five days from the date of this decree, and *and* take a receipt for the same, and upon payment of the same and presentation of said receipt to the custodian of said bonds, he, said custodian, Marshall P. Ayers & Co., is ordered and directed to deliver to said county of Morgan the sum of $4,782.97 of said bonds in par value thereof, and to take a receipt for the same.

And it is further ordered by consent that the said county of
178 Morgan be *be* substituted to all the rights of the said William M. Dodge, adm's, &c., in and to the said judgment entered and costs aforesaid against the said Illinois River Railroad Company under and by virtue of said judgment.

And it is further ordered by consent that the said county pay to the said Isaac Vail, or to his att'y for him, and within five days from date of this decree, the said sum of $5,094.91, and take the receipt of said Vail for the same; that upon the payment of the same and the presentation of the receipt for the same, the said Marshall P. Ayers & Co., custodian of said bonds, is hereby directed to deliver to the said county of Morgan $12,737.27 of said bonds in the par value of the same.

And it is further ordered by the court by consent that the said county of Morgan be substituted to all the rights of the said Isaac Vail under

and by virtue of said judgment as against the said Illinois River Railroad Co. And it is further ordered that the said custodian of said bonds file the recept of the said county or its agent for the said
179 bonds in this court, in this case, to the next term of this court, and that the said Vail and Dodge recover costs in this case; and this case is continued.

To be recorded by consent as of May 28, 1866.

H. B. McCLURE,
Solicitor for Wm. M. Dodge, Adm's.
HENRY E. DUMMER,
Solicitor for Isaac Vail.
MORRISON & EPLER,
Sols. for Morgan Co.

STATE OF ILLINOIS,
Morgan County, ss:

I, John N. Marsh, clerk of the circuit court within & for the said county and State aforesaid, do certify that the foregoing is a true and correct copy of the decree rendered in the above entitled cause, and is recorded in this office in chancery record F, on page 88.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court at Jacksonville, in said county, this 1st day of October, A. D. 1877.

[SEAL.] JNO. N. MARSH, *Clerk.*

180 (Indorsed:) Ex. 3. Henry T. Thomas, adm'r, &c., vs. Morgan County et als. Copy of decree rendered at May special term, A. D. 1866. Recorded in chancery record F, page 88. Jno. N. Marsh, clerk.

(Also indorsed:) Filed Oct. 2, 1877. J. A. Jones, clerk.

181 EXHIBIT No. 4.

STATE OF ILLINOIS,
Morgan County:

Circuit court of said county, September term, 1863.

ELLIOTT AND BROWN
vs.
MORGAN COUNTY, ILL'S RIVER R. R. Co., Alexander Studwell, Lucius Hopkins, and George T. Cobb, Richard S. Thomas, William Thomas, Joseph Ladd, and Isaac Vail.

Alexander Studwell, Lucius Hopkins, and George T. Cobb, three of the defendants in the above entitled cause, for answer to so much of the bill herein as they are advised it is necessary for them to answer, and for a bill of interpleader herein, say that on March 1st, 1874, in pursuance of a vote of the county of Morgan, before that day had for that purpose in pursuance of an act of the general assembly of said State, dated November 5th, 1849, the county court of said county ordered and caused to be issued to the Illinois River Railroad Company in the bill mentioned, one hundred bonds of five hundred dollars each,
182 bearing interest, with coupons thereto attached as set out in the

bill herein, and said court then and there ordered that said bonds so issued be delivered to said railroad company. A certified copy of the order aforesaid, together with all the orders of said court touching said bonds and the issue thereof, is herewith filed as a part of this bill of interpleader and as evidence in this cause and marked Exhibit A.

In pursuance of said order of said court, said one hundred bonds were duly made and executed under the seal of the county court, a copy of one of which said bonds is filed with the bill herein and is here referred to as a part of this bill of interpleader.

As soon thereafter as the fall of the year 1857, said county court delivered all of said bonds, by and with the knowledge and consent of said railroad company and for their use, to Elliott and Brown, the complainants herein, said railroad company being entitled to the exclusive possession of the same as hereafter specified upon delivering to said Elliott and Brown a certificate or certificates of stock in said company in favor of said county of Morgan to the amount of fifty thousand dollars; on Dec'r 5th, 1857, said railroad company ordered the issuance and delivery of said certificate of stock therein to the treasurer of said
183 county of Morgan, and the same was so issued and delivered a copy thereof being delivered to said Elliott and Brown—a copy of said order marked B is filed with the original bill herein and is is here referred to as a part of this bill of interpleader—which certificate issued and delivered as aforesaid was in consideration of said bonds, delivered as aforesaid to Elliott and Brown for the use of said company.

At or before the time of issuing said bonds, it was agreed and stipulated between said county of Morgan and said railroad company that said bonds were to be used by said company in constructing said road between Virginia, in Cass County, and Jacksonville, in Morgan County, and said Elliott and Brown were to deliver said bonds to said company as the same might be needed for that purpose.

In pursuance of the charter of said company the president & trustees thereof, on the 1st day of November, 1858, for the purpose of securing thirteen hundred and twenty bonds with the interest thereon to grow due, each of said bonds of one thousand dollars, payable on January 1st, 1880, bearing six per cent. interest, issued by said company, and bearing six per cent. interest issued by said company, and by them sold to said Alexander Studwell, Lucius Hopkins, and George T. Cobb, made, executed, and delivered their mortgage to said Studwell, Hop-
184 kins, and Cobb upon all the corporate property due, belonging to said company, both real and personal, at the date of said mortgage, and all their rights and interests as a corporation, including the bonds and the rights to the bonds aforesaid, and then and there delivered said mortgage, after having acknowledged the same according to law to said mortgagees; a copy of which mortgage, together with a copy of the certificate of acknowledgement and copies of the certificates of recording thereof in the counties Peoria, Tazewell, Mason, Cass, and Morgan in said State, and a copy of the charter of said company and a copy of one of the bonds referred to in said mortgage are herewith filed in the form of a printed pamphlet and asked to be taken as evidence herein and as a part of this bill of interpleader.

These respondents say that under said mortgage they became interested in said county bonds from the date of said mortgage; one of the conditions of said mortgage is that if said railroad company at any time fail to pay the interest on the debt thereby secured, then the whole debt should become due and said mortgagees be entitled to take immediate

possession of all the mortgaged property, and these respondents now allege that said company did fail to pay said interest, to wit, the amount due January 1st, 1862, and the amount due July 1st, 1862, when
185 due, and for more than thirty days thereafter.

These respondents further allege that because of said failure to pay said interest, afterwards, to wit, on July 12th, 1862, at a regular meeting of the president and trustees of said railroad company, held at Virginia, in Cass County aforesaid, at which meeting said Studwell & Hopkins, representing these respondents, were present, among other things, it was resolved and ordered by said president and trustees, in substance, as follows, to wit:

"That the Illinois River Railroad Company hereby admits that the trustees under the mortgage and trust deed executed by this company to Messrs. Studwell, Hopkins and Cobb, dated November 1st, 1858, to secure the payment of 1,320 of its *its* mortgage bonds, amounting, in the aggregate, to $1,020,000, are now justly and legally entitled to the actual possession of the railroad of this company as provided in said mortgage or trust deed, and that said company hereby consents and agrees that said trustees, or any two of them, shall and may at any time enter in and upon and take actual possession of the said railroad and all the property, real and personal, franchise and effects, of this company, for the purpose and as provided in said mortgage or trust
186 deed, and that they may use and operate said railroad, and receive the entire earnings, income, and profits thereof, and apply the same as in and by said mortgage or trust deed is provided."

Respondents here refer to a copy of the proceedings of said company at said meeting filed in this cause with the original bill and marked Exhibit D.

In pursuance of this mortgage and the action aforesaid of said company upon such failure to pay interest, these respondents, on the 12th of July, 1862, entered into and upon and took actual possession of said railroad, and said company turned over and delivered to them the said road, with all their property, rights, and franchise, including said bonds of Morgan County, so far as said company were able to deliver them, and said railroad company have never since that date had the possession of or control over said road, or anything thereunto appertaining.

Respondent' further say that after they had thus taken possession of said railroad and effects, to wit, on the 22d of October, 1862, they gave notice to the complainants herein of the acts of said company aforesaid and of their right to said bonds, by delivering to them a certified copy of said resolutions, and requested said complainants to deliver said county bonds to respondents' agents. See copy of said notice
187 attached to Exhibit D filed with original bill.

Respondents further say that at the last adjourned session of the general assembly of said State a new charter for these respondents claim to hold said county bonds for the use and benefit of said new company, to be applied upon the construction of said railroad between Virginia and Jacksonville aforesaid in compliance with the aforementioned agreement between the old company and the county of Morgan. This new charter adopts the provision of the old charter, and the same are applicable to the new company. Respondents here present a copy of said new charter and make it a part of the files in this case.

Respondents now allege that by virtue of all the proceedings hereinbefore set out they have become the owners entitled to the possession

of said county bonds, and that their said right attached thereto from and after the date of said mortgage, and they further insist that any and every act of said railroad company after the date of said mortgage looking or tending to the use or disposal of said county bonds in any manner other than in constructing said railroad between Virginia and Jacksonville aforesaid, was due, if at all, wholly without right, and is null and void, insisting that said company could not rightfully dispose of said bonds in any manner whatever, except in the actual
188 construction of said railroad between said places.

Respondents deny that the claims to these bonds set up by Richard S. Thomas is rightful or just, for the reason following, to wit:

1st. Said R. S. Thomas being the president of said company and the party who negotiated the loan, to secure which the mortgage aforesaid was made to these respondents, was fully advised of all said facts before and at the time he attempted to get possession of said county bonds, and knew that said respondents' lien had long before attached thereto.

2d. Said Thomas was estopped from purchasing said county bonds from said company for the consideration and purposes for which he attempted to purchase the same, by his contract made by him as president of said company with said Morgan County that said bonds should be used in the construction of the road between Virginia and Jacksonville aforesaid, and not otherwise, and but for which contract said bonds would never have been issued.

3d On July 12th, 1862, said Thomas had not gained possession of said bonds; the transfer by the company to him, whether rightful or not, was not completed, and on that day he, as president of said company by his own vote, joined in the transfer by said company to these respondents of said road and everything thereto appertaining, including said bonds as hereinbefore set forth.

189 4th. The action of said company on January 31st, 1862, under which said Thomas claims, was null for that purpose, because there was no mention or specific transfer of these bonds made, the order amounting only to an acknowledgment of a certain indebtedness to Thomas, and authorizing the secretary to draw against any fund belonging to the company for payment of the same, and the secretary's order does not specify how many or what amount of said bonds are to be delivered thereon. Respondents here refer to Exhibit C filed with original bill herein.

5th. The meeting at Springfield, at which said last-mentioned action was had, was void, because the board was not authorized to meet at that place, the office and fixed place of business of said company being at Virginia, in Cass County, and not elsewhere; and because at said meeting but two trustees, other than this claimant himself, were present, one of whom also claims another part of these bonds. Said Thomas not voting, no quorum voted on said order.

In relation to the claim of William Thomas to a part of these bonds these respondents say that said company, by its president & trustees, entered into a contract with Messrs. Allen and McGrady to build the railroad between Jacksonville and Virginia aforesaid, which contract was made before said county bonds were issued said company
190 through its president, R. S. Thomas, and its directors, this Wm. Thomas being one of them, represented to the county court of Morgan County the fact of the making of said contract, by which representation, and the agreement as to their application hereinbefore set

out, said county court was induced to issue said bonds, and upon the delivery of said bonds as hereinbefore stated, said company, by its aforesaid president and directors, rescinded said contract, using the bonds claimed by said William Thomas to buy the same from Allen and McGrady, and thus left the road without any contract for construction.

All of which was an attempt to make an improper application of said bonds with the full knowledge of all the facts aforesaid. As to how said William Thomas procured said order for said bonds from Allen & McGrady these respondents know nothing.

The first, second, and third objections hereinbefore urged to the claim of R. S. Thomas apply equally to the claim of William Thomas.

In relation to the claims of Joseph Ladd and Isaac Vail these respondents say that they have no just right whatever to any part of these bonds, because they claim to have judgments or claims against said railroad company in some form, but neither of said judgments
191 was rendered in the said county of Morgan, and consequently can have no lien on any property in said county. Again, they have caused garnishee process to issue against said Elliott and Brown to Morgan County from the counties where said judgments were rendered, claiming the right to do so under the 38th section of the 57th chapter of the revised statutes of 1845, title "judgments & executions," and by virtue thereof to seize said bonds in the hands of said Elliott & Brown.

Respondents deny that they, or either of them, have any such right. They deny that they have brought their case within the provisions of said statute authorizing said process to issue at all, or if they have done so, they deny that a garnishee process can issue out of the county where the judgment was rendered, and the court out of which such process issues cannot thereby acquire jurisdiction over said Elliott and Brown in this county. They further deny that such process can be levied or served upon said Elliott & Brown, whereby to reach said county bonds for any purpose, they being simply custodian of said bonds, the real debtor on said bonds, if any, being the county of Morgan. Respondents further say that whatever claims said Vail and Ladd may have have occurred since the execution of the mort-
192 gage to respondents, & are therefore subordinate to the right of said mortgages.

The premises considered, these respondents pray that upon the hearing of this cause these county bonds may by this court be decreed to be the property of these respondents, to be held and issued by them, or by the railroad company recently chartered, to and for the purpose of constructing said railroad between Virginia and Jacksonville aforesaid, in accordance with the contract made between the old company and the county of Morgan, and that these claimants now setting up claims to these bonds may be forever barred of and from all right to any part thereof, and for all such other and further relief, whether specially prayed or not, as to justice and right may belong; and as in duty bound, &c.

M. AND G. M. McCONNELL,
Sol's for Studwell, Hopkins, & Cobb.

(Endorsed:) Filed Sept. 6th, A. D. 1875. J. A. Jones, clerk.

EXHIBIT No. 5.

Copy of a decree.

At a regular term of the circuit court of the county of Morgan and State of Illinois, begun and held at Jacksonville, in said county
193 and State, on the 23d day of September, A. D. one thousand eight hundred and sixty-seven, there being present as follows, to wit: The Hon. Chas. D. Hodges, judge of 1st judicial circuit; Stephen Sutton, clerk; , sheriff.

And among other proceedings of the said court are found the following, to wit:

On the 29th day of November, A. D. 1867, it being one of the regular term days of said September term, A. D. 1867.

JAMES BLAIR, A. D. ADDIS, GEORGE W. DYE, Henry Swift, S. Roney, Henry W. McKee, Henry S. Thomas, adm'r of R. S. Thomas, Benjamin Beesley, Harvey O'Neal, Isaac Vail, Benjamin H. Galton, Richard H. Galton, Benjamin Beesley, Ansel Haines, Jonathan Haines, Lafayette Schaffer, and Reuben Bergstresser
vs.
ILLINOIS RIVER RAILROAD COMPANY, MARSHALL P. AYERS, AUGUSTUS E. AYERS. } Creditors' bill.

And now, on this day, came the parties by their solicitors, and this cause coming on to be heard upon bills, answers of Morgan
194 County, Illinois River Railroad Company, Marshall P. Ayers, Augustus E. Ayers, & William S. Hook, replication and proofs, and the court being now sufficiently of and concerning the premises, it is considered and adjudged that the Morgan County bonds on deposit with said M. P. Ayers & Co., to wit, $32,500.00 in nominal value, being sixty-five in number, from No. 1 to No. 7 inclusive, and from No. 43 to No. 100 inclusive, be applied so far as necessary to the payment of complainants' judgments and interest, as follows, to wit:

James Blair	$204 13
A. D. Addis	406 40
George W. Dye	378 89
Henry Swift	278 80
S. Roney	269 85
Henry McKee	1,084 42
Henry S. Thomas, adm'r	25,922 61
Benjamin Beesley	385 88
G. O. Neal, Isaac Vail, Benj. H. Galton, Richard H. Galton, & Benj. Beesley	3,785 80
Ansel Gaines & Jonathan Gaines	2,821 25
Lafayette Schaffer	751 43
Reuben Bergstresser	1,623 42
Francis Low	3,546 36

2. That James Berdan, esq., be appointed special master to execute this decree.

195 3. That the said M. P. Ayers & Co., depositaries of said Morgan County bonds, deliver the same to said special master.

4. That unless said Morgan County & said judgment creditors, complainants as aforesaid, agree that said bonds shall be received in payment at an agreed price, the special master is directed to sell the same, or so many of said bonds as necessary, for cash, at public sale, at the door of the court-house in Jacksonville, Illinois, first giving notice of the time, place, & terms of sale by publication in the daily Jacksonville Journal three weeks in succession, & that he apply the proceeds to the payment of costs of suit & sale, & then to the payment of the claims of complainants as hereinbefore set forth, & any surplus of bonds or cash be reported to this court.

5. If the said county of Morgan shall agree with said creditors to take said bonds at an agreed price without sale, then the said special master shall so many of said bonds to said creditors as at the agreed price will pay said judgments, & report any surplus, if such there be, to this court.

6. The said special master is directed to report his acting & doings in the premises to this court.

196 STATE OF ILLINOIS,
Morgan County, ss:

I, Joseph W. Caldwell, clerk of the circuit court within and for the said county and State aforesaid, do certify that the foregoing is a true and correct copy of the decree rendered in the above-entitled cause, and is recorded in this office in "Chancery Record No. F," on page' 385 & 386.

In testimony whereof I have hereunto subscribed my name and affix' the seal of the said circuit court, at Jacksonville, in said county, this 3d day of September, A. D. 1875.

[L. S.] JOS. W. CALDWELL, *Clerk.*

(Indorsed:) Filed Sept. 6th, A. D. 1875. J. A. Jones, clerk.

197 EXHIBIT 6.

Report of special master.

JAMES BLAIR AND OTHERS
vs.
ILLINOIS RIVER RAILROAD COMPANY AND others. } In chancery.

To the circuit court of Morgan County, Illinois:

The undersigned special master reports that he has executed the decree in the above entitled cause as follows:

The undersigned received of M. P. Ayers & Co. under said decree, sixty-five Morgan County bonds, five hundred dollars each, dated 10th Sept., 1857, issued in payment of a subscription to the capital stock of the Illinois River Railroad Company, and numbered from 1 to 7 inclusive, the principal payable in twenty years from date, and with interest coupons attached for interest at the rate of six per cent. per annum, payable at the American Exchange Bank, New York, on the first day of March, in each year, the coupons attached being for the year 1861, and subsequent years, except bond No. 1, from which the coupons for 1861 & 1862 are detached, and excepting the bonds No. 2 to No. 7, inclusive, from which the coupons are detached; and the undersigned executed to the said M. P. Ayers & Co. a receipt for the same. The county of Mor-

gan and the judgment creditors, complainants, by their solicitors,
198 having agreed that said creditors should take such bonds and coupons in full payment and satisfaction of their aggregate claims as adjudged by the court and set out in said decree, I did, in pursuance of said decree, deliver to said creditors, by their solicitors, all of the above described bonds, $32,500.00 in nominal amount, with interest-coupons attached, as received from said M. P. Ayers & Co. and above described, and took a receipt in duplicate for the satisfaction and discharge of said claims, one of which duplicate receipts is herewith filed.

November 30th, 1867.

Respectfully submitted.

JAS. BERDAN,
Special Master in Chancery.

(Endorsed) Filed Sept. 6th, 1877. J. A. Jones, clerk.

EXHIBIT No. 7.

STATE OF ILLINOIS,
Morgan County:

Of the special September term, A. D. 1873, of the Morgan County circuit court.

Pleas before the honorable the circuit court for the county of Morgan, in the State of Illinois, at a special chancery term of said court held at the court-house in Jacksonville in said county, commencing September 16th, A. D. 1873.

Present the honorable Chauncey L. Higbee, judge of the elev-
199 enth judicial circuit, presiding at the request of the Hon. Cyrus Epler, judge of the eighteenth judicial circuit; Wm. H. Broadwell, sheriff.

Attest:

JOSEPH W. CALDWELL, *Clerk.*

STATE OF ILLINOIS,
Morgan County:

Of the special September term, A. D. 1873, of the Morgan County circuit court.

COUNTY OF MORGAN
vs.
PEORIA, PEKIN & JACKSONVILLE RAILROAD Company, Isaac L. Morrison, William Thomas, Mahlon H. L. Scholes, and Benjamin S. West.

And now on this day came the parties, and on motion of Morgan County leave is given to amend its original bill, which is accordingly done, and afterwards came the county of Morgan and filed its motion in writing to suppress portions of certain depositions, which motion is in words and figures following, to wit:

COUNTY OF MORGAN
vs.
200 PEORIA, PEKIN & JACKSONVILLE Railroad Company, I. L. Morrison, Wm. Thomas M. H. L. Schooles, and Benjamin S. West.

The complainant moves the court to suppress the following portions of the depositions filed by the defendants:

1st. Answer of H. G. Whitlock to interrogatory 5 in chief, 1st, because it does not contain any statement of a fact, but the feeling & opinions of the witness; 2d, so far as it relates to the associate parties it has the additional objection that it is hearsay.

2d. Answer of H. G Whitlock to 15th interrogatory in chief, 1st, because the answer relates to the motives of the members of the county court; 2d, it relates to the motives of the associate justices, & is liable to the additional objection that it is hearsay; 3d, it is an attempt to prove by parol what can only be proved by the records, that is, the action of the county court.

3d. The answer of H. G. Whitlock to the 20th interrogatory in chief, 1st, because it asks for the opinion of the witness; 2d, it asks for the opinion of witness when not acting officially; 3d, so far as it asks for the opinion of the associate justices, it is liable to the additional objection that it is hearsay.

201 4th. The answer of H. G. Whitlock to the 29th interrogatory in chief, 1st, because it is a statement as to the contents of a written instrument without accounting for the non-production of the original instrument.

5th. So much of the answers of H. G. Whitlock to interrogatories 19, 27, & 28, as relates to the declarations of the Morgan Co. court, when not acting officially, 1st, because such evidence is not competent.

6th. So much of the answers of H. G. Whitlock to interrogatories 21 & 22 as consist of parol evidence of what the county court did, that is, the order of the court, 1st, because such orders can only be shown by the records.

7th. The answer of Isaac L. Morrison to interrogatory 13 in chief, 1st, because it is not legally competent to prove motions of the members of the co. court; 2d, the action of the co. court can only be shown by the record; 3d, it is hearsay so far as relates to the expressions of opinion by the members of the co. court; 4th, declarations of the members of the co. court when not acting officially not competent evidence.

8th. Answer of I. L. Morrison to interrogatory so far as it states the declarations of members of the county court when not acting officially, because such declarations are not competent evidence.

202 9th. The answer of I. L. Morrison to interrogatory 16th, so far as relates to what was done by the co. court, which can only be shown by the record; and also to so much of said answer as states the declarations of members of the county court, because such evidence is not competent or admissible.

10th. The answer of I. L. Morrison to interrogatories 17, 18 & 19, in chief, because an attempt to prove by parol what can only be shown by the record.

And thereupon, the court not then having examined said exceptions, enquired of the solicitors of the parties interested in any of said exceptions were of a formal character which could be obviated by retaking the depositions, and on being answered in the negative the court reserved its decision of said motion until the hearing.

WILLIAM THOMAS
vs.
MORGAN COUNTY AND LUCIUS HOPKINS, Alexander Studwell & George T. Cobb, trustees, &c.; M. H. L. Schooley, Benjamin S. West, James Blair, Aaron Addis, George W. Dye, Henry Swift, S. Roney, Henry McKee, Benjamin Beesley, Harvey O'Neal, Henry T. Thomas, administrator of Richard S. Thomas; Isaac Vail, Benjamin Gatton, Richard
203 P. Gatton, Ancil Haines, Jonathan Haines, Lafayette Schaffer, Reuben Bergstresser, Francis Low, Henry E. Dummer, and The Peoria, Pekin and Jacksonville Railroad Company.

On this day came William Thomas and dismissed his bill as to Lucius Hopkins, Alexander Studwell, and George T. Cobb.

COUNTY OF MORGAN
vs.
THE PEORIA, PEKIN & JACKSONVILLE RAILROAD COMPANY, Isaac L. Morrison, William Thomas, M. H. L. Scholey, and Benjamin H. West. — 27. Original bill in chancery.

WILLIAM THOMAS
vs.
MORGAN COUNTY AND OTHERS. — 78. Original bill in chancery.

MAHLON G. L. SCHOOLEY
vs.
MORGAN COUNTY AND PEORIA, PEKIN & JACKSONVILLE RAILROAD COMPANY. — Cross bill.

204 BENJAMIN S. WEST
vs.
MORGAN COUNTY AND THE PEORIA, PEKIN and Jacksonville Railroad Company. — Cross bill.

And now on this day came the parties in all of the above entitled suits and filed their stipulation in relation to the trial of the above-entitled cases, which stipulation is in words and figures following, to wit:

STATE OF ILLINOIS.
Morgan County, ss:

COUNTY OF MORGAN
v.
PEORIA, P. & J. R. COMPANY ET AL. — In chancery.

WILLIAM THOMAS
vs.
COUNTY OF MORGAN ET AL. — In chancery.

It is ordered by consent that the case of Wm. Thomas vs. The County

of Morgan et al. be tried with the case of the County of Morgan vs. The Peoria, Pekin and Jacksonville Railroad Company et al.

205 2nd. That the depositions taken in the case of The County of Morgan against the Peoria, Pekin and Jacksonville Railroad Company may be used on the trial of the said cases as so tried.

The foregoing stipulation shall in no respect diminish the rights of the said Thomas, but he shall have and may exercise all the rights of which he would be possessed if his case was tried separately.

The foregoing stipulation shall extend to the cases of M. H. L. Schooley vs. Morgan Co. et al. and B. S. West vs. Morgan County et al. The foregoing stipulation shall in no respect diminish the rights of the Peoria, Pekin and Jacksonville Railroad Company, nor the rights of Isaac S. Morrison nor the County of Morgan, but each and both of said parties shall have and may exercise all the rights of which he would possessed if the above cases were tried separately.

THE PEORIA, PEKIN AND JACKSONVILLE RAILRAOD CO.,
ISAAC L. MORRISON,
By McCLURE & KIRBY,
Solicitors.
WM. THOMAS.
SPRINGER & DUMMER.

And thereupon it is ordered by the court that said cases be consolidated and tried as one suit.

And afterwards these cases above entitled came on to be heard upon the pleadings and proofs following, to wit:

206 The original bill of Morgan County with amendments and the exhibits referred to.

The answer of the Peoria, Pekin & Jacksonville Railroad Company.

The answer of Isaac L. Morrison.

The answer of William Thomas.

The answer of Benjamin S. West.

The cross-bill of said West.

The answer of Mahlon H. L. Schooley.

The cross-bill of said Schooley.

The answer of the Peoria, Pekin & Jacksonville Railroad Company to the cross-bill of West.

The answer of said railroad company to the cross-bill of Schooley.

The answer of Morgan County to the cross-bill of West.

The answer of Morgan County to the cross-bill of Schooley.

207 The original bill of William Thomas vs. The County of Morgan and others with the amendments and supplemental bill.

The answer of Peoria, Pekin & Jacksonville Railroad Company to said bill.

The several answers of the County of Morgan, Henry E. Dummer, Benjamin S. West, Mahlon H. Schooley, Benjamin Beesley, Harvey O'Neil, Isaac Vail, B. H. Gatton, R. P. Gatton, Henry T. Thomas, Francis Low, Henry Swift, James Blair, George W. Dye, Stephen Roney, A. D. Addis, Reuben Bergstresser, Lafayette Schaffer, Ansel Haines, Henry McKee.

The cross-bill of Benjamin S. West and Mahlon H. L. Schooley filed in the said last case.

The several answers of the County of Morgan, The Peoria, Pekin and Jacksonville Railroad Company, Henry E. Dummer, and Francis Low to the cross bill of said Schooley and West respectively.

The replications to all the above-mentioned answers.

The bill, amended bill, answers, replications, exhibits, and all pleadings and papers and proofs on file in the case in chancery of James
208 Blair & others vs. The County of Morgan, and others, and also the decree rendered in said case at the November special term of Morgan County circuit court, 1867, and also the master's report in said case, and also the order of the court approving the report and entering satisfaction of decree.

The transcripts of the judgments of the following parties against the Illinois River Railroad Company admitted to be the same demand mentioned in the pleadings, decree, &c., in the above case of James Blair & others vs. Morgan County & others, to wit, James Blair, Aaron Addis, George W. Dye, Henry S. Swift, Stephen Roney, Harvey O'Neil, Benjamin Gatton, Richard P. Gatton, Isaac Vail, Benj. Gatton, Henry McKee, Benjamin Beesley, A. & J. Haines, L. Shaffer, Reuben Bergstresser, Francis Low, Henry T. Thomas, administrator of Richard S. Thomas.

Depositions of Francis Low, Benjamin Beesley, Isaac Vail, Benjamin S. Prettyman, Reuben Bergstresser, all admitted to have reference to the same demands in the above mentioned judgments. The testimony of William Thomas, Henry E. Dummer, Cyrus Epler, John Allen, and James Epler and William S. Hook taken in open court and reduced to writing and certified by the judge.

The admissions by the parties upon the hearing that the city of
209 Jacksonville voted and subscribed $50,000.00 in bonds for stock to the P., P. & J. R. R. Co., to be paid in bonds on completion of the railroad to Jacksonville.

Depositions of Stephen Dunlap, John Hardin, John Trabue, with order of county court of March 6, 1869.

The answer of Morgan County filed July 31, 1863, to the bill in chancery of Elliott and Brown, in the circuit court of said county, against the County of Morgan, The Illinois River Railroad Company, and others, for interpleader.

The certified copies of the orders of the county court of said county, marked Exhibit 1, and filed in above case July 31, 1863.

The cross-bill of the County of Morgan against Richard S. Thomas and others, filed in the circuit court of said county, in chancery, June 1, 1864.

The decree of the court at the September term, 1863, in the above case of Elliott & Brown v. Morgan County and others.

The decree of the circuit court of Morgan County, in the case in chancery of Richard S. Thomas vs. The County of Morgan and others, rendered September term, 1865, also the final decree and orders of said court afterwards made in same case.

The orders of Morgan County court directing payment of judgment of Ladd and Vail mentioned in foregoing decrees, and showing can-
210 cellation of county bonds in making such payment.

The certificate of Richard S. Thomas, certifying to the county court of Morgan County that the Illinois River Railroad Company had let the contract to build the railroad, and the county bonds were only to be paid out for work done in Morgan County.

The transcript of the judgment of the supreme court in the above case.

The testimony of James Berdan and Isaac R. Bennett taken in by the above case of Richard S. Thomas vs. Morgan County and others, and filed May 24, 1865.

The deposition of Edward R. Elliott and appended statement of William Brown in writing, taken in above case before Henry Striker, N. P., June 22, 1865.

The following statutes of Illinois, entitled as follows:

"An act to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County," approved Feb'y 11, 1853. (Private Laws of 1853, page 53.)

"An act to amend an act entitled 'An act to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County,'" approved March 1st, 1854. (Public Statutes of 1854, page 207.)

"An act to amend the charter of the Illinois River Railroad Company," approved January 29, 1857. (Private Laws of 1857, page 105.)

"An act to amend an act entitled 'An act to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County,'" approved February 11th, 1853; and also to amend "An act entitled 'An act to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County,'" approved March 1, 1854. (Private Laws of 1867, page 838.)

"An act to further amend the charter of the Illinois River Railroad Company," approved February 14, 1859. (Private Laws of 1859, page 457.)

"An act to incorporate the Peoria, Pekin, and Jacksonville Railroad Company," approved June 11th, 1863. (Private Acts of 1863, page 234.)

"An act supplemental to an act entitled 'An act to incorporate the Peoria, Pekin, and Jacksonville Railroad Company,'" approved June 11, 1863, approved February 16th, 1865. (Private Laws of 1865, vol. 2d, page 203.)

"An act to amend the charter of the Peoria, Pekin and Jacksonville Railroad Company," approved February 19th, 1867. (Private Laws of 1867, 2d vol., page 707.)

"An act to amend the several acts incorporating the Peoria, Pekin and Jacksonville Railroad Company," approved March 10, 1869. (Private Laws of 1869, vol. 3, page 335.)

"An act to incorporate the Sangamon Valley Railroad Company," approved Feb'y 16th, 1865. (Private Laws of 1865, vol. 2, page 214.)

"An act to incorporate the Arenzville, Virginia and Bloomington Railroad Company," approved March 7, 1867. (Private Laws of 1867, vol. 1, page 976.)

"An act to amend the charter of the St. Louis, Alton, and Rock Island Railroad Company," approved Feb'y 23, 1867. (Private Laws of 1867, vol. 2d, page 709.)

(The three foregoing acts objected to by counsel for Morgan County; objection overruled; counsel except.)

Stipulation to admit as evidence the record of deed of trust or mortgage from Illinois River Railroad Company to Studwell, Hopkins, and Cobb, trustees for bondholders of said railroad company; also of the maser's deed to Arnold, Allen, and Trowbridge on the foreclosure of said trust-deed; also of the deed from said Arnold, Allen, and Trowbridge to the Peoria, Pekin and Jacksonville Railroad Company.

The record of said deed of trust or mortgage in book N of mortgages in recorder's office, Morgan County, commencing page 65.

The record of said deed of the master in chancery on foreclosure of the deed of trust to Allen, Arnold, and Trowbridge, purchasers at the sale, in book Y Y of deeds in said recorder's office, commencing on page 615.

The record of said deed from Arnold, Allen, and Trowbridge to the

Peoria, Pekin and Jacksonville Railroad Company, in said book Y Y of deeds, commencing on page 621.

213 Certified copy of the record and proceedings of and in the circuit court of the United States for the southern district of Illinois on the foreclosure and sale under decree of the court of the aforesaid trust or mortgage-deed and the property therein described, also a copy of the judgment rendered by said court for balance due after said sale.

Copy of the proceedings and resolutions of the Illinois River Railroad Company on the 12th July, 1862, with certificate of the secretary filed May 24th, 1865, in the case of Richard S. Thomas vs. The County of Morgan & others, in this court above mentioned.

Copy of the order of Ills. River R. R. Co. allowing claim of R. S. Thomas, certified by Schooley, secretary.

The deposition of Isaac L. Morrison and exhibits therein mentioned.

The deposition of Herbert G. Whitlock and exhibits therein mentioned.

The original receipt or written instrument given by Isaac L. Morrison to the county court of Morgan County for the $20,000 in county bonds, referred to by said Morrison in his deposition, the genuineness of this instrument, and also that it was given as testified was admitted, but counsel for Morgan County objected to its competency; the court overruled the objection, and counsel excepted.

Testimony of H. B. McClure, taken in open court and certified by the judge.

214 The answer of William Thomas, filed in the above case of Richard S. Thomas vs. The County of Morgan & others, September 1, 1864.

The orders of the Ills. River Railroad Co. in favor of Allen & McGrady for $4,000.00, in county bonds, assigned to William Thomas.

The orders of the Illinois River Railroad Company in favor of Mahlon H. Schooley.

The note of the president of said company to Benjamin S. West.

Depositions of M. H. Schooley, James M. Ruggles, the testimony in open court of William Thomas, John Allen, certified by the judge. Two letters of Lucius Hopkins to William Thomas.

(Letters objected to by counsel for the P., P. & J. R. R. Co., Isaac L. Morrison and Morgan County as incompetent inadmissible evidence: objection overruled, and parties except.)

The stipulation of Lucius Hopkins and Alexander Studwell.

(Objected to by counsel for Peoria, Pekin and Jacksonville Railroad Company, and by counsel for Morgan County, and by Isaac L. Morrison, as incompetent and inadmissible evidence; objection overruled; counsel except.)

The oral evidence certified by the court.

The admission that the copies of notes & due bills set out in the transcripts of records in the cases of Blair vs. Ill. R. R. R. Co., Addis vs. Ill. R. R. Co., Dye vs. Ill. R. R. Co., McKee vs. Ill. R. R. Co., &

215 Haines vs. Ill. R. R. Co. are true copies of the original notes sued on in said cases, to have the same force and effect as the original notes & due bills.

And the court being now fully advised of and concerning the premises, it is considered and adjudged by the court—

1st. That the bonds of Morgan County, originally issued to the Illinois River Railroad Company, dated the 10th September, 1857, for five hundred dollars each, numbered from 61 to 80 inclusive, amounting to

ten thousand dollars, heretofore delivered to the Peoria, Pekin & Jacksonville Railroad Company, together with the interest coupons thereto belonging, maturing on the first of March, 1870, and thereafter, be restored to the custody of the county of Morgan, by the delivery of the same to the clerk of the Morgan County court by said Peoria, Pekin & Jacksonville Railroad Company on or before the 1st day of November, 1873.

2d. That the bonds of Morgan County originally issued to the Illinois River Railroad Company, dated the 10th day of September, 1857, for five hundred dollars each, numbered from 83 to 100 inclusive, amounting to nine thousand dollars, heretofore delivered to the Peoria, Pekin and Jacksonville Railroad Company, and by said company transferred to Isaac L. Morrison, & now in the possession of said Morrison, be
216 restored, together with the interest coupons thereto belonging maturing on the 1st day of March, 1870, and thereafter to the custody of the county of Morgan, by the delivery of the same to the clerk of the Morgan County court on or before the 1st day of November, A. D. 1873.

3d. That the said bonds, when restored to the custody of the county of Morgan, shall be held, except so far as the same are disposed of by this decree, as the same was held previous to their delivery to the said Peoria, Pekin & Jacksonville Railroad Company.

4th. That of the bonds so restored to the custody of the said county of Morgan, the said county of Morgan shall within ten days after acquiring possession thereof deliver to William Thomas, in discharge of his claim as assignee of Allen and McGready, eight of said bonds, with interest-coupons thereto belonging from March, 1860.

5th. That if the county of Morgan shall not be able to deliver to said William Thomas coupons, as above directed, by reason of their cancellation or otherwise, then, in lieu of said coupons not delivered, the county shall pay, on the delivery of said eight bonds, the equivalent value, at par, in money.

6th. That Mahlon H. L. Schooley is adjudged to have a claim against the Illinois River Railroad Company to the amount of one thousand & twelve dollars and eighty-four cents; and the said Benjamin S.
217 West is adjudged to have a claim against the Illinois River Railroad Company to the amount of one hundred and sixty-three dollars and sixty four cents; that the said bonds of Morgan County not disposed of by this decree are assets applicable to the payment of said claims of Schooley & West; that of said bonds so to be restored to the custody of Morgan County & not otherwise disposed of by this decree, the county of Morgan shall deliver to the master of chancery of Morgan County, within ten days after acquiring possession of the same, so many of said bonds, with coupons attached, as will produce a sum sufficient to pay the claims of the said Schooley and West and the costs of their cross bills; that the said master in chancery sell said bonds so delivered to him, with coupons attached, at public sale, for cash, and apply the proceeds of sale to the payment of the claims of said Schooley and West, with six per cent. interest from the date of this decree & costs of sale & costs of cross bills adjudged as aforesaid, the said master having first given twenty days' notice of the time, place, & terms of sale by publication in some newspaper published in Jacksonville, Illinois.

7th. That the Peoria, Pekin and Jacksonville Railroad Company and Isaac L. Morrison pay the costs of the said suit of the County of
218 Morgan against the Peoria, Pekin and Jacksonville Railroad Company and others.

8th. That the County of Morgan pay the costs of the suit of William Thomas against the County of Morgan & others and the costs of the cross-bills of Schooley & West.

9th. That the master in chancery report his actings and doings in the premises to this court.

10th. And thereupon each of the parties to the above entitled suit, consolidated as aforesaid, prayed an appeal to the supreme court of Illinois, which is allowed by the court to all and each or any number of said complainants and defendants in said suit so consolidated, upon the condition that any party or parties appealing shall file, on or before the 1st day of November, A. D 1873, an appeal bond in the penal sum of five hundred dollars, with good and sufficient security, conditioned as required by law in cases of appeals from the circuit to the supreme court, in the office of the clerk of the Morgan County circuit court, the security to be approved by said clerk.

C. L. HIGBEE.

STATE OF ILLINOIS,
Morgan County, ss :

I, Joseph W. Caldwell, clerk of the circuit court within and for the said county and State aforesaid, do certify that the foregoing is a
219 true and correct copy of the decree rendered in the above-entitled causes, and is recorded in this office in chancery record I, commencing on pages 288.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said circuit court, at my office in Jacksonville, this 4th day of September, A. D. 1875.

[L. S.] JOS. W. CALDWELL,
Circuit Clerk.

(Endorsed :) Filed Sept. 6th, A. D. 1875. J. A. Jones, clerk.

And afterwards, to wit, on Friday, the 17th day of September, in the year last aforesaid, the following further proceedings were had in said court in said entitled cause and entered of record, to wit :

Order of court granting leave to withdraw demurrer.

JOHN ALLEN ET AL.
v.
COUNTY OF MORGAN. } In chancery.

On motion of defendant, by its solicitors, leave is granted to withdraw its demurrer and file answer herein by the first Monday of October next.

And afterwards, to wit, on the 2nd day of October, in the year
220 last aforesaid, came said complainants, and filed in the office of the clerk of said court their replication in said entitled cause, which said replication is in the words and figures following, to wit :

Replication.

UNITED STATES OF AMERICA,
State of Illinois, Southern District, ss:

JOHN ALLEN ET AL. }
vs. } In chancery.
MORGAN COUNTY ET AL. }

In the circuit court of said district, of the June term, A. D. 1875.

The replication of John Allen, Edwin L. Trowbridge, and Aaron Arnold, complainants, to the separate answers of Morgan County and Henry E. Dummer.

These replaints, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants, for replication thereunto saith, that they do and will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive, and insufficient in the law to be replied unto by these replaints; without this, that
221 any other matter or thing in the said answers contained material or effectual in law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these replaints are ready to aver, maintain, and prove as this honorable court shall direct, and humble pray as in and by their said bill they have already prayed.

DEARBORN & CAMPBELL,
Solicitor for Complainants.

(Endorsed:) Filed this 2d day of October, 1875. J. A. Jones, clerk.

And afterwards, to wit, on Friday, the 21st day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and seventy-six, the following further proceedings were had in said court in said-entitled cause and entered of record, to wit:

Order of court appointing Stryker special com'r.

JOHN ALLEN, EDWIN L. TROWBRIDGE, AND Aaron Arnold
v.
THE COUNTY OF MORGAN, HENRY E. DUMmer, The Peoria, Pekin & Jacksonville Railroad Company, and Isaac L. Morrison. } In chancery.

By consent of parties, by their solicitors, this cause is referred to Henry Stryker, jr., esq., as special commissioner, to take testimony
222 herein and make report thereof to this court.

And afterwards, to wit, on Friday, the 14th day of April, in the year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order of court granting leave to file amended bill.

JOHN ALLEN ET AL.
vs.
COUNTY OF MORGAN ET AL. } In chancery.

On motion of complainants, by Messrs. Dearborn & Campbell, their solicitors, leave is granted them to file an amendment to the bill of complaint herein.

And afterwards, to wit, on the said 14th day of April, in the year last aforesaid, came said complainants and filed in the clerk's office of said court their amended bill in said cause, which said amended bill is in the words and figures following, to wit:

Amended bill.

In the circuit court of the United States for the southern district of Illinois.

JOHN ALLEN, EDWIN L. TROWBRIDGE, AND Aaron Arnold,
vs.
223 THE COUNTY OF MORGAN, THE PEORIA, Pekin & Jacksonville Railroad Company, Isaac L. Morrison, Henry E. Dummer. } In equity.

And now come the complainants, by leave of court, &c., and amend their bill of complaint in the manner following:

After the words "county paid value for," on page 14, in the ninth line from the top thereof, add the words, "that the coupons then due and unpaid greatly exceeded in amount the sum of said judgments, interest and costs, and that said judgments, interest and costs should have been paid out of said matured coupons, and that the action of said county in cancelling or destroying said bonds, or any of them, was in equity a fraud, and intended to delay and defeat the creditors of said Illinois River Railroad Company."

After the words "railroad company," on page 14, in the twelfth line thereof, strike out all down to the words "the complainants," on the same page and in the twenty-second line thereof, and insert the words "for the sum of $7,008.10 cash paid on said judgments, interest and costs, and that the said bonds with the coupons thereon, less $7,008.10 of the matured coupons are assetts in the hands of said county liable to be and which should be applied to the payment of the judg-
224 ment belonging to the complainant aforesaid."

After the words "not bound by the same," on page 18, in the second and third lines thereof, insert the words "that at this time after allowing all legal and proper deductions, there was due in matured coupons a greater amount than said six thousand dollars paid in money aforesaid." And after the word "inclusive," on page 18, in the eighth line thereof, insert the words "without the matured coupons thereon."

After the words "and the interest," on page 22, in the first line thereof, add the words "warrants and interest on the matured interest warrants." After the word "complainants," on page 23, in the seventh line thereof, add the words "and the complainants further state and charge that the aforesaid agreement and settlement in the Blair case,

by which said Morgan County was to pay $6,000 in money and $6,000 in bonds, were made and intended by said Morgan County to defeat the creditors of said Illinois River Railroad Company, and is therefore fraudulent as to them, and so far at least as the same resulted in the cancellation or pretended satisfaction of the said bonds and coupons beyond an amount sufficient to pay the said $6,000 in the matured coupons and the $6,000 in bonds are void as to these complainants."

225 After the word "states," on page 28, in the fifteenth line thereof, add the words "with legal interest on the matured warrants."

After word "mentioned," on page 28, in line 22 thereof, add the words "together with coupons falling due after the commencement of this suit, except so far as the said county may be able to deliver the original of same."

And after the words "James Blair et al," on page 28, in lines 24 & 25, add the words "and such of said bonds as were decreed to be paid to said William Thomas as aforesaid, be reissued by said county and delivered to your complainants to apply on said judgment belonging to them," and strike out all between said words "James Blair et al." and the words "and for such," on page 29, in the fifth line thereof.

DEARBORN & CAMPBELL,
Sol's for Comp'ts.

(Endorsed:) Filed April 14th, 1876. J. A. Jones, clerk.

And afterwards, to wit, on the 20th day of September, in the year last aforesaid, came said defendant and filed the clerk's office of said court its amended answer in said cause, which said amended answer is in the words and figures following, to wit:

226 *Amended answer.*

UNITED STATES OF AMERICA:

Circuit court of the U. S. for the southern district of Illinois. In vacation, as of June term, 1876.

Amendments to answer to original bill, by leave of the court, and answer to amended bill.

After the word "road," in 8th line of page 3 of said answer, insert the following: "Your respondent avers that the order of the Morgan County court, under which the vote in A. D. 1856 was taken, by which it is claimed that the subscription of Morgan County to the capital stock of the Illinois River Railroad was authorized, was an order directing a vote of Morgan County for or against three subscriptions of fifty thousand dollars each to the capital stock of each of three distinct & independent railroad companies, by a single , under which order those who voted were compelled to vote, & did vote, for or against all of said three subscriptions, your respondent avers that said vote was taken under the general law of 1849, authorizing subscriptions to the capital stock of railroad companies by municipal corporations, a copy of which order is

227 filed & made part of this answer. Your respondent claims that the said order directing 15th Oct., 1856, by Morgan County, by reason that subscriptions of stock to three roads was required

by said order in a single vote, and no opportunity was given to vote for or against a subscription to the capital stock of the Ill. R. R. Co. as a separate & independent propositions, was illegal, and the vote under it gave no authority to the county court of Morgan County to make said subscription of fifty thousand dollars & issue the bonds now in controversy in payment of the same: and your respondent further avers that no valid law has ever been passed by the general assembly of the State of Illinois legalizing said subscription, the amendatory law attempting to legalize said subscription not being passed in conformity with sec. 23 of article 3d of the constitution of 1848; and your respondent further avers that none of the bonds in controversy have ever come to the hands of innocent purchasers, and your respondent further avers."

2D AMENDMENT.—Strike out the following words in the 4th line of the 4th page of defendant's answer. "to wit, on the 10 day of September," & insert "Sometime in the fall of the year 1857."

3D AMENDMENT.—In 19th line, 3d page of said answer, strike
228 out the word "Simultaneously," and insert "soon after."

4TH AMENDMENT.—Fill the blank on the 17th line of the 8th page with the words "November, special."

5TH AMENDMENT.—In 8th line, 13th page, fill the blank with "1st November, 1858."

6TH AMENDMENT.—At the end of the last line of the 14th page, insert the word "not."

7TH AMENDMENT.—After the 8th line of the last page, insert the following:

"Fifth. That as between the county of Morgan and the Illinois River Railroad Company, the county owes the Illinois River Railroad Company nothing: First. Because there was an agreement that no bonds of M. C. should be paid out except for work in Morgan County, & no work was done in M. County; & 2d. That the consideration for the subscription of Morgan County (as between the company & the county) was the building of the road to Jacksonville; that the road never was built to Jacksonville, the company became insolvent, forfeited its charter by nonuser, parted with that part of its road that was built, & the time given for the completion of the road to Jacksonville expired in February, 1863; that the complainants being purchasers of bonds of the Ill. R. R. Co., looked to the company's mortgage on the whole road for the payment of the company's bonds, & never did look to subscriptions of stock
229 (such as the subscription of Morgan County for the payment of the bonds of the Ill. R. R. Co.); that they are not of that class of creditors who have a right to resort to subscriptions of stock for payment (irrespective of the question whether the county owed the company) as would another class of creditors of the Ill. R. R. Co, who, for labor and materials, did look to subscriptions for payment, & nothing else; that the plaintiffs are in no better position than the Ill. R. R. Co., and as the county of Morgan owes the company nothing, as between it and the company the plaintiffs are not entitled to anything.

"Sixth. That no legal authority was given by the vote in 1856 to the county court of Morgan County to make the subscription & issue the bonds in controversy.

"And your respondents, further answering, denies all charges of fraud or purposes of fraud, as charged in complainants' amended bill, & avers that *that* the 35 bonds retired under decree in the case of R. S. Thomas et al. vs. Morgan County et al., & the fifty-three bonds retired under the decree in case of Blair et al. vs. Morgan Co. et al., were paid out & acquired by Morgan County under said decrees, without any act

or purpose of fraud on the part of the parties to the suits referred to, & without any taint of moral wrong."

230 And all allegations in said bill as amended not hereinbefore confessed & avoided, admitted, or denied, are hereby denied, and your respondent prays, &c.

MORGAN COUNTY,
By DUMMER, BROWN AND SPRINGER.

DUMMER, BROWN and RUSSELL,
J. D. SPRINGER,
Sol's for M. County.

(Endorsed:) Filed September 20th, 1876. J. A. Jones, clerk.

And afterwards, to wit, on the 20th day of September, in the year last aforesaid, came the defendant Morgan County and filed in the clerk's office of said court the suggestion of death of Arnold, which said suggestion of death is in the words and figures following, to wit:

Suggestion of death of Arnold.

U. S. OF AMERICA:

Circuit court of the U. S. for the southern district of Illinois.

JOHN ALLEN, EDWIN F. TROWBRIDGE, AND Aaron Arnold
vs.
MORGAN COUNTY ET AL.

231 The defendant Morgan County comes and suggests the death of Aaron Arnold, one of the complainants, in support of which suggestion the following affidavit is presented:

J. T. Springer, on oath, states that he was in the city of New York on the 15th April, 1876, and made inquiries for said Aaron Arnold at the Importers' and Traders' Bank in New York, where he was well known, & was there & then informed that the said Aaron Arnold died in New York, the place of his residence, in March, 1876, & this affiant was informed by others that said Arnold was dead, which information this affiant verily believes to be true.

J. T. SPRINGER.

Subscribed and sworn to before me this 20th September, 1876.
J. A. JONES, *Clerk.*

(Endorsed:) Filed September 20th, 1876. J. A. Jones, clerk.

And afterwards, to wit, on said 20th day of September of the year aforesaid, the following further proceedings were had in said court in said cause & entered of record, to wit:

Motion suggesting death of Arnold.

JOHN ALLEN ET AL.
vs.
COUNTY OF MORGAN ET AL. } In chancery.

232 This day comes county of Morgan, by Messrs. Dummer and

Brown, its solicitors, and suggests the death of Aaron Arnold, one of the parties complainant to the bill herein.

And afterwards, to wit, on the 20th day of Sept. of the year last aforesaid, came said defendant and filed in the clerk's office of said court, motion to suppress evidence, which said motion to suppress evidence is in the words and figures following, to wit:

Motion to suppress evidence.

U. S. AMERICA:

Cir. court of the U. S. for the S. district of Illinois.

JOHN ALLEN, EDWIN L. TROWBRIDGE AND Aaron Arnold
vs.
THE COUNTY OF MORGAN, HENRY E. DUMMER, The Peoria, Pekin & Jacksonville Railroad Company, and Isaac L. Morrison.

The defendants move the court to suppress all of the testimony of Isaac L. Morrison having any relation to the following suits, anything relating to the prosecution of the same, or to impeaching in any way or to any degree the decrees rendered in said suits, on the execution of said de-
2 3 crees: Elliott & Brown vs. Morgan Co. et al.; Richard S. Thomas et al. vs. Morgan Co. et al.; Blair et al. vs. Morgan Co. et al., on the ground that he was the solicitor of Morgan County in all of said suits, or one of them, & all his testimony discloses knowledge, communications, & information which are privileged.

2d. The defendants move to suppress, so far as Morgan County is concerned, the testimony of Herbert G. Whitlock having any relation to the suit of Blair et al., anything relating to the prosecution of said suit, or to impeaching in any way or to any degree the decree rendered in the same, & as to the execution of said decree, on the ground that he was one of the solicitors of Morgan County in said suit.

3d. The defendant, Morgan Co., moves to suppress the following offered in evidence before the special master, & filed with him:

1st. The opinion as reported of the S. court in the case of Morgan County vs. William Thomas et al., the summary of the facts being offered in evidence, on the ground that it is hearsay evidence.

2d. The depositions of Elliott, Brown (Edward R. Elliott & William Brown), taken in a case in which there were not the same parties plaintiffs & defendants as is in this case.

DUMMER, BROWN & RUSSELL.

234 J. T. SPRINGER,
Sol'rs for M. County.

(Endorsed:) Filed Sept. 20th, 1876. J. A. Jones, clerk.

And afterwards, to wit, on Thursday, the 12th day of April, in the January term of said court, in the year of our Lord one thousand eight hundred and seventy seven, the following further proceedings were had in said court in said cause and entered of record, to wit:

Default against Morrison & P. P. & J. R. R.

JOHN ALLEN AND EDWIN L. TROWBRIDGE, survivor of Aaron Arnold, deceased,
vs.
COUNTY OF MORGAN, PEORIA, PEKIN AND JACKSONVILLE Railroad Company, Isaac L. Morrison and Henry E. Dummer. } In chancery.

This cause coming on for hearing, and all the defendants having been duly served with process herein, and said defendants Isaac L. Morrison and the Peoria, Pekin and Jacksonville Railroad Company having failed to appear or plead herein, the allegations of the bill of complaint and amendments thereof are taken as true against them by default.

And the death of complainant Aaron Arnold having been
235 suggested, and the court finding the interest of all the complainants was joint and not several in the subject matter of these proceedings, and having directed the cause to proceed in the name of said survivors, this cause coming on to be heard at this term and was argued by counsel, and thereupon it is ordered, adjudged, and decreed as follows:

That the bonds and coupons voted and executed by Morgan County, mentioned in the bill of complaint, are assetts of the Illinois River Railroad Company for the payment of debts against said railroad company, except as far as any portion thereof has been lawfully appropriated and absorbed.

That the complainants are the equitable owners of the judgment against the said Illinois River Railroad Company in favor of Alexander Studwell, Lucius Hopkins, and George T. Cobb, as trustees, among there, to one million sixty-one thousand two hundred and ninety-two and $\frac{56}{100}$ dollars, rendered in said circuit court of the United States as alleged in the bill of complaint, and are entitled to the payment of the same out of the assets of said Illinois River Railroad Company.

That for the purpose of ascertaining the amount of said assets this cause is referred to Anthony L. Knapp, esq're, as special master, to state an account upon the evidence on file and which may be pro-
236 duced by the parties, and report to this court upon the matters following:

First. The dates, amounts, rates of interest, and maturity of all bonds and coupons issued by Morgan County to the Illinois River Railroad Company that are specified in the bill of complaint and delivered to said railroad company or placed in the hands of any agent or trustee of the same, and also the rate and amount of interest on matured coupons.

Second. The amount of money actually paid by Morgan County to the creditors of the said Illinois River Railroad Company, with the dates thereof, and to whom paid.

Third. The amount of said bonds and coupons that have been delivered to the creditors of the said Illinois River Railroad Company or sold under the decree in favor of William Thomas and others, marked as Exhibit No. 7 herein, omitting the bonds and coupons claimed by Morgan County to have been satisfied in compromising the cases of Vail and Ladd and James Blair and others men ioned in the bill of complaint, and against said Morgan County et al., except the six thousand dollars delivered to James Blair et al. in the compromise of the Blair case, giving dates and the persons to whom delivered.

Fourth. The amount of taxable costs and necessary legal expenses

which said Morgan County has paid in the litigations relating to
237 said bonds and coupons.

Fifth. The amount, date, and number of all bonds and coupons now in the possession of the defendants in this suit.

Sixth. Whether the county of Morgan is entitled to any other or further credit in respect to said bonds and coupons.

Seventh. That said master, after calculating the entire amount of the bonds and coupons issued by Morgan County aforesaid, adding the legal interest on matured coupons, will deduct the amounts found under the second, third, fourth, & fifth and sixth directions aforesaid, first from the amount due as interest at the time of such payments, if such interest was then sufficient, and report to this court by the first day of next June the balance of principal and interest then due.

That said master shall also report whether the defendants Henry E. Dummer and Morgan County, or either, are or is liable under the compromise in the Blair case for any amount paid for William Thomas or overpaid in said compromise.

And afterwards, to wit, on said 6th day of July, in the year last aforesaid, came said special master and filed in the clerk's office of said court his report in said cause, which said report is in the words & figures following, to wit:

238 *Report of Special Master A. L. Knapp.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In the circuit court, June term, A. D. 1877. In chancery.

JOHN ALLEN ET AL
vs.
THE COUNTY OF MORGAN ET AL.

To the honorable the judges of said court:

The undersigned, special master, to whom this cause was referred with direction to ascertain & report to the court upon certain matter in the decree herein specified, would respectfully report thereon as follows, viz:

1st. In response to the first direction in said decree he finds that Morgan County on the 10 day of September, A. D. 1857, issued 100 bonds of $500 each, in all $50,000, all dated the said day and year, payable on March 1st, 1877, at the American Exchange Bank in New York City, with 6 per cent. interest per annum, payable at said bank on the 1st day of March, 1858, & on the same day in each year thereafter, according to coupons attached to said bonds.

These bonds were thus issued to and for the benefit of the Illinois River Railroad Company & were placed by the county with
239 *with* Messrs. Elliott & Brown, bankers, in Jacksonville in said county, first detaching the coupons that became due March 1st, 1858.

The coupons on all said bonds falling due March 1st, 1859, and 1860, were paid at maturity by the county to Elliott & Brown for the use of the railroad company.

The rate and amount of inter*nal* on matured coupons will be shown hereafter.

2nd. In response to the second direction he reports, that Morgan County has paid in money, on account of the said bonds, to the creditors of the railroad company as follows:

June 1st, 1866. To Vail, in satisfaction of his judgment against said railroad company	$5,094 91
Same date. To Dodge, adm'r, &c., of Ladd, in satisfaction of like judgment	$1,913 19
Total	$7,008 10
Costs paid on same	52 72
Nov. 29, 1867 To H. E. Dummer, esq., solicitors for Blair & others, judgment creditors of said company	$6,000

240 These items included all the money payments made to the said creditors, except to William Thomas, as hereafter shown.

3d. In response to the third direction he reports: The amount of bonds and coupons delivered to said creditors, or sold under the decree in favor of William Thomas & others, he finds to be as follows:

1st. There was delivered to Messrs. Elliott & Brown for expenses in September, 1863, matured coupons on bonds Nos. 1, 2, 3, 4, 5, & 6, $30 each, due March 1st, 1861, $180; also coupon on bond No. 1, $30, due March 1st, 1862; in all, $210.

2d. To William Thomas was delivered Dec. 11, 1875, 8 bonds for $500 each, in all $4,000; & the county paid him in money the sum of $2,160, being in full for all the coupons which should have been on said bonds, & which takes out of consideration the said bonds & all coupons pertaining thereto.

3d. Nov. 29, 1869, there was delivered to H. E. Dummer, esq., solicitor of and for Blair & others, creditors, &c., 12 bonds, $500 each, in all $6,000, with coupons thereon due March 1st, 1867, & subsequent years.

Jan'y 8th, 1876, there was sold by the master in chancery of
241 Morgan County for the payment of the judgment in favor of Schooley & West, bonds Nos. 61 & 62, $1,000 in all, with coupons thereon due March 1st, 1870, and subsequent years; also 2 coupons on bond No. 63 for $30 each, due March 1st, 1870 & 1871, & with proceeds of which he paid said judgment & the costs of sale, leaving balance in his hands of 39 cents, and which retired said bonds & interest on the same, due on & after March 1st, 1870.

4th. In response to the fourth direction he reports, that the county has paid in taxable costs & necessary legal expenses, attending the litigation about these bonds, as follows:

June 1st, 1866, to clerk of Morgan County for costs in suit, $52.72.

Same date, to Morrison & Epler, att'y's fees in cases in circuit court and in supreme court (39 Ill's Rep., 496), and subsequent services in circuit court in said case, upon removal from the supreme court, $3,500.

Oct. 1st, 1869, to Morrison & Epler, att'ys, for services in the Blair case & in the case in U. S. circuit court here, & in case of Wm. Thomas in the circuit & supreme court, $1,200.

242 Jan. 1, 1874, for costs in all these various suits, date of payment & amount agreed upon by the respective counsel before me, $2,102.66.

5th. In response to the fifth direction as to amount of bonds, &c., in the possession of the defendants herein he reports, that there are in the possession of Morgan County, &, as he understands, uncancelled,

bonds to the amount of $5,000 of said issue, & which should have thereon all the coupons due March 1st, 1861, & subsequent years; that there are in the possession of the defendant I. L. Morrison $9,000 of said bonds, with coupons thereon, due March 1st, 1870, and subsequent years; that said defendant Morrison has also sold two bonds, $1,000 in all, with the same coupons as last above, & which are now held by some outside party.

6th. In response to the sixth direction he reports, that he knows of no other credits to which the county is entitled in the way of payments on these bonds; no claim was made before me, except that the county, by her solicitors, claimed that under the settlement & payment made June 1, 1866, of the Vail and Ladd judgments & in accordance with the order & decree of the Morgan circuit court, there was then retired
243 & paid of said bonds the sum of $17,500; the validity of which claim he does not pass upon, as he considers that under the third direction of the decree herein, the same is excluded from his consideration, and in computing the amounts due on these bonds he has treated the said bonds as still subsisting obligations of the county.

7th. In response to the seventh direction, to compute the amount of the bonds & coupons aforesaid, adding the legal interest on matured coupons, & then deducting the amounts of payments in money, costs, &c., and bonds delivered as found by him under the directions of said decree & report thereon, he reports as follows:

That he has computed the interest due on said bonds, the first interest being for the year due March 1st, 1861, & has computed interest on each amount of yearly interest from the time the same became due & at the rate of six per cent. per annum, & has in the first instance of payment being made by the said county deducted said payment, & in the case of the subsequent payments he found they did not equal the interest due at the times of such payments, & for convenience & believing it to be equitable he has allowed the county interest at the same rate upon such payments, while computing at the same time against the county
244 interest upon all the coupons from their maturity.

He reports that under the computation he has thus made, and deducting out all the cash payments of every kind, and the sum of all bonds and coupons delivered to the creditors of the railroad company by said county, there remains due from the county upon said bonds on March 1st, 1877, the sum of seventy-two thousand seven hundred and twenty-one dollars & fifty-five cents, say $72,721.55.

He further reports that these bonds being due by the terms thereof, should the court render a decree against the county for so much money, in that case in addition to the surrender by the defendant Morrison of the bonds $9,000 held by him, there will still remain the two bonds, $1,000, sold by him, and subsisting obligations against the county, which if he is unable to surrender to the county are to be considered; the amount due on said bonds March 1, 1877, & interest on the coupons thereon, I computed & find to be $1,580.80, for which sum there should be a decree against him, & which would lessen the amount due from the county just that sum.

Leaving in that case due from the county	$71,140 75
I. L. Morrison	1,580 80
Total	$72,721 55

245 I attach hereto and as a supplement, a statement showing in detail the method of my several computations & the result in each, as also the amount of deductions & credits, in order that if the princi-

pal is incorrect or the execution faulty the errors can easily be made apparent.

8th. In response to the las direction, "as to whether the defendant, Henry E. Dummer & Morgan County, or either, are liable under the compromise in the Blair case for any amount paid for William Thomas, or overpaid in said compromise," he has to report, that after carefully considering the testimony upon that question, he is of opinion that neither said Dummer or Morgan County are liable for any sum under said compromise, or for or in the manner the same was settled & adopted and paid.

Springfield, June 23d, 1877.

Respectfully submitted.

A. L. KNAPP,
Spec'l Master.

ALLEN
vs.
MORGAN COUNTY.

To turn the interest on coupons into 7 per cent., take interest on coupons as found by & add 1-6 of same, viz:

Interest on coupons:

1st amount found by me			$2,422 80
2nd " " " "			5,419 90
3d " " " "			7,795 80
246		6	$15,638 50
Additional sum			2,606 42

The above sum of $2,606.42 will make the interest as found by me on coupons equal to 7 per cent. per annum.

A. L. KNAPP.

(Endorsed:) Filed July 6, 1877. J. A. Jones, clerk.

And afterwards, to wit, on the 9th day of July, of the year aforesaid, came the complainants & filed in the clerk's office of said court their exceptions to report of Commissioner Knapp, which said exceptions to report of Commissioner Knapp's is in the words and figures following, to wit:

Complainants' exceptions to report of Commissioner Knapp.

UNITED STATES OF AMERICA,
Southern District of Illinois:

In the circuit court, June term, A. D. 1877. In chancery.

JOHN ALLEN ET AL.
vs.
THE COUNTY OF MORGAN ET AL.

And now come the complainants, by Hay, Greene & Littler, & Dearborn & Campbell, their solicitors, and make the following ex-
247 ceptions to the report made and filed herein by A. L. Knapp, esquire, the special master appointed herein, viz:

1st. The interest on matured coupons or warrants is calculated at the rate of 6 % per annum, when it should be calculated at the rate of 7 %, that being the legal rate of interest in the State where said coupons or warrants are made payable, viz, the State of New York.

2nd. The amounts paid Morrison & Epler for fees, viz, $35.00 & $1,200.00, & the interest thereon, should not be allowed as a credit in favor of Morgan County, the same being for attorneys' fees in resisting the validity of the bonds & coupons in question.

3rd. The amounts paid by Morgan County, viz, $52.72 & $2,102.66, & interest on same, should not be allowed in her favor, the same having been expended in court costs in attempting to defeat the validity of the bonds in question.

4th. There is a mistake in said report in that part answering the 5th direction, in this: that instead of the $6,000 in bonds Morgan County now has in her possession, having coupons attached due March 1st, 1861, & thereafter, they only have the coupons attached due March 1st, 1870, & thereafter; wherefore the complainants ask that said report be corrected in the aforementioned particulars.

HAY, GREENE & LITTLER,
DEARBORN & CAMPBELL,
Their Solicitors.

248 (Endorsed:) Filed July 9th, A. D. 1877. J. A. Jones, cl'k.

And afterwards, to wit, on the 11th day of July, of the year aforesaid, came said defendan s & files in the clerk's office of said court their exceptions to the report of the special master, which said exceptions to the report of the special master is in the words & figures following, to wit:

Defendants' exceptions to the report of the special master.

Circuit court of the United States for the southern district of Illinois.
In chancery.

JOHN ALLEN & OTHERS, COMPLAINANTS,
vs.
MORGAN COUNTY, DEFENDANTS.

The defendant, Morgan County, excepts to the report filed by the special master.

First. Because said special master has allowed interest on the interest-warrants or coupons attached to the Morgan County bonds in controversy, from the date of the maturity of the said coupons.

Secondly. Because the special master did not credit Morgan County with the thirty five bonds with coupons attached retired under & in conformity with the decree rendered by the Morgan County circuit
249 court, at its March term, A. D. 1866, in the case of R. S. Thomas et al. vs. Morgan County et al., viz, bonds numbered from No. 8 to No. 42, both inclusive.

Third. Because the special master did not credit Morgan County with the fifty three (53) bonds of said county delivered to Morgan County to be cancelled under the provisions of the decree rendered by the Morgan County circuit court at its November special term, 1867, in the case of Blair et al. vs. Morgan County et al., viz, bonds numbered from 61 to 100, both inclusive, & bonds numbered from 48 to 60, both inclusive.

J. T. SPRINGER AND
DUMMER, BROWN & RUSSELL,
Solicitors for Morgan County.

(Endorsed:) Filed July 11th, A. D. 1877. J. A. Jones, cl'k.

250 In the circuit court of the United States for the southern district of Illinois. In equity.

JOHN ALLEN, EDWIN L. TROBRIDGE, AND Aaron Arnold,
vs.
MORGAN COUNTY, PEORIA, PEKIN & JACKSONville Railroad Company, Isaac L. Morrison & Henry E. Dummer.

Depositions of witnesses taken before me, Henry Stryker, jr., special commissioner in this suit, at my office in the city of Jacksonville, county of Morgan and State of Illinois, pursuant to the annexed notice, commencing at 9 o'clock a. m., March 14, 1876, and to continue from day to day until completed. The complainants being represented at the examination by Mr. Campbell, one of their solicitors; the county of Morgan by their solicitors, Dummer & Springer; Mr. Isaac L. Morrison and Henry E. Dummer, said defendants, being present.

The complainants first introduced their witnesses as follows:

STEPHEN DUNLAP having been produced, by me first duly sworn according to law, answered the following interrogatories in the words and figures following:

Deposition of Stephen Dunlap.

Int. 1. State your name, age, residence, and occupation.

Ans. 1. Stephen Dunlap; am 65 years of age; reside in Morgan County, Illinois, and am a farmer.

Int. 2. How long have you resided in Morgan County?

Ans. 2. Since the spring of 1841.

Int. 3. How far from the county seat?

Ans. 3. At the county seat a part of the time, and the remain-
251 der about six miles from the county seat.

Int. 4. About what portion of the time at the county seat?

Ans. 4. About 8 or 10 years from 1841.

Int. 5. Have you ever been connected with the county affairs in any official capacity; and, if so, in what way?

Ans. 5. I was one of the associate judges here.

Int. 6. During what years?

Ans. 6. Two terms, from 1861 to 1869.

Int. 7. Were you, during that period, acquainted with the financial condition of the county?

Ans. 7. Yes, sir.

Int. 8. Do you know what the matured obligations against the county at that time were worth?

Ans. 8. They were worth par.

Int. 9. Prior to that time—that is, prior to 1861, what were they worth?

Ans. 9. There was a time prior to 1861 that county orders were not at par. I am not positive as to the exact years, but I think when I came into office the matured obligations were at par. I am not sure, but I think they were at par.

Int. 10. At and since the expiration of your term of office what has been the value of matured obligations against the county?

Ans. 10. As far as I know they have been at par.

Int. 11. Since your term of office has expired have you been
252 acquainted with the condition of the finances of the county to any extent?

Ans. 11. I have not.

Int. 11. At any time during your term of office, do you know of any of the matured obligations of the county selling below par, or at a discount?

Ans. 11. I have no recollection now of any selling below par.

Cross examined:

Int 1. Do you understand by the phrase matured obligations anything else than Morgan County orders; if you include anything else in your answers than county orders, what obligations were they?

Ans. 1. I include also rail bonds, a portion of which we paid the interest on and some of the principal. The Illinois River Railroad bonds were in litigation—on all the other bonds we paid the interest punctually.

Int. 2. State what bonds of the county of Morgan were paid, principal as well as interest; when were they paid and to whom, and what was paid for them?

Ans. 2. I don't know as I can tell now without referring to the books. I am not certain but what we paid a little interest on those Illinois River Railroad bonds. I have no recollection of paying any of the principal of those bonds. The bonds we paid principal and interest were railroad, but I don't remember the number or the style of the bonds. I
253 think we paid par for the bonds; this was the first four years I was in, and we may have taken up some in the last four years. I am not positive that we paid par for them, and am not positive but that we did. I don't remember whom we paid for them.

Int. 3. What amount of bonds were taken up by Morgan County during your first term of office?

Ans. 3. I do not recollect.

Int. 4. Can you not state to what railroad the bonds you say were taken up were issued?

Ans. 4. I think it was the Alton Road.

Int. 5. You refer to books; was there an entry made on the records of the purchase of the bonds issued to the company you termed the Alton road at the time of the transaction?

Ans. 5. I presume there was.

Int. 6. When did the bonds that were taken up mature, and what was the rate of interest on them?

Ans. 6. I cannot state.

Int. 7. Did you personally, or in connection with the other members of the Morgan County court, transact this business of taking up county bonds issued to the Alton Company?

Ans. 7. In connection with the other members of the court.

Int. 8. Can you now recollect any person from whom any of said bonds were purchased?

254 Ans. 8. Yes, sir; George Wilson.

Int. 9. Can you now recollect the amount or approximately the amount purchased from George Wilson?

Ans. 9. I cannot.

Int. 10.

Re-examined:

Int. 1. These bonds you speak of as having been taken up, had they

matured at the time? and, if not, what was the object of taking them up, and were they taken up out of the general or special fund?

Ans. 1. I don't think they all had matured; I think we bought some before they had matured. I am not positive that any of them had matured when we bought them. If we took them up before they matured it was because we could buy them for less than their face. They were taken up out of the general fund.

Int. 2. Were they or not taken up out of a surplus fund?

(Question objected to as leading.)

Ans. 2. They were.

Recross-examined:

Int. 1. Were these bonds taken up 6-per-cent. bonds?

Ans. 1. I do not recollect now.

Int. 2. Can you state the corporate names of the railroad company which you termed the Alton Road?

255 (Question objected to by complainants because it is not a proper recross-examination.)

Ans. 2. I believe it was called the Jacksonville & Alton Road.

STEPHEN DUNLAP.

Deposition of John Trabue.

JOHN TRABUE, a witness of lawful age, was next produced, by me first duly sworn, and he testified in answer to the following interrogatories as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. 1. John Trabue; am 60 years old; reside in Jacksonville, and am not engaged in active business.

Int. 2. How long have you resided in Jacksonville?

Ans. 2. About 20 years.

Int. 3. During that time, have you held any official position in the county, and for what length of time?

Ans. 3. I was clerk of the county court of Morgan County from December 1st, 1861, to December 1st, 1873.

Int. 4. During that time were you acquainted with the financial condition of the county?

Ans. 4. I was.

Int. 5. What was the value of matured obligations against the county during that time?

256 Ans. 5. Always at par.

Cross-examined:

Int. 1. What do you understand by the phrase matured obligations?

Ans. 1. Any obligation that were due county orders, jury certificates without coupons, or anything of the kind, they were always paid on presentation.

Int. 2. During the term of your office were any interest coupons presented that were not paid?

Ans. 2. There were some of the Illinois River Railroad coupons, about $1,200, that were refused; they were detached from bonds that were in litigation.

JOHN TRABUE.

Wm. S. Hook.

WILLIAM S. HOOK, being next produced, sworn and examined, testified as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. 1. William S. Hook; 35 years old; reside in Jacksonville, Illinois, and am engaged in the banking business.

Int. 2. How long have you resided in Jacksonville?

Ans. 2. Thirty-five years.

Int. 3. How long have you been engaged in the banking business?

257 Ans. 3. Since 1859.

Int. 4. In what capacity?

Ans. 4. Most of the time teller.

Int. 5. Since 1860, have you been acquainted with the financial condition of Morgan County to any extent?

Ans. 5. Merely through the transaction that has taken place through our house.

Int. 6. State what the matured obligations of Morgan County since 1860 have been worth.

Ans. 6. As far as I know they have been paid at maturity, and were at par.

Int. 7. What has the bank with which you have been associated had to do with these matured obligations?

Ans. 7. Many of the bonds issued by the county has been made payable at the American Exchange Bank of N. Y.; that bank is our correspondent in that city, and it has been the custom of the county officials to have the payment of interest on the county bonds made through us; those payments made through us have always been made promptly and at the maturity of the obligation.

Int. 8. For what length of time has such been the case?

Ans. 8. I think since 1860, and probably before that except for two or three years when the payments were made through the 1st

258 National Bank of Jacksonville.

Cross-examined:

Int. 1. Were these bonds of which you speak 6 % bonds?

Ans. 1. I believe so.

Int. 2. Annual or semi-annual interest?

Ans. 2. Annual.

Int. 3. What bonds were these of which you have spoken?

Ans. 3. Tonica and Petersburg was our company, and the Jacksonville, Alton and St. Louis—we also paid some interest on the Illinois River Railroad bonds—as a general thing they were paid here.

W. S. HOOK.

I. L. Morrison.

ISAAC L. MORRISON, of lawful age, was next produced, sworn, and examined, and he testified as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. 1. Isaac L. Morrison; am 50 years old; reside in Jacksonville, Illinois; and am a lawyer.

Int 2. State how long you have resided in Jacksonville, and what your business has been during that residence.

Ans. 2. I have resided here since summer of 1851, and my busi-
259 ness during all that time has been the practice of law.

Int. 3. Do you know anything about the case of Henry Thomas, administrator of the estate of Richard S. Thomas, deceased, against Morgan County and others, on the chancery side of the Morgan circuit court; and if so, what connection had you with it, if any?

Ans. 3. I was quite familiar with that suit and the matters involved with it during its progress and with the litigation preceding it, in which the title of the suit was changed; in connection with Cyrus Epler, I was the solicitor of Morgan County throughout the litigation.

Int. 4. Who was the solicitor for the defendant Isaac Vail, in that suit, if you know?

Ans. 4. As the case stood entitled as mentioned heretofore, there were two defendant's judgment creditors of the Illinois River Railroad Company. Mr. Vail was one, and I think the other was Mr. Ludd. Mr. Henry E. Dummer and Mr. Henry B. McClure were the solicitors, but whether Mr. McClure had any connection with the claims of Mr. Vail I am not able to speak with any certainty.

Int. 5. State what you know about the final disposition of the case of Richard S. Thomas vs. Morgan County.

260 Ans. 5. The original litigation was commenced by Elliott and Brown filing a bill of interpleader againt various parties who were asserting claims to an interest in some bonds known as the Ill's River Railroad bonds, then in the possession of Elliott & Brown, Richard S. Thomas, William Thomas, Morgan County, Isaac Vail, and Mr. Ludd, and some other parties being made defendants. Then several parties coming in and setting up their respective claims, an order was made relieving Elliott & Brown of the custody of the bonds, and then the case stood as Richard S. Thomas and others vs. Morgan County, as I remember. That case was finally heard by the circuit court, and decided in favor of Morgan County and against each and all of the other parties except Morgan County. The case was taken into the supreme court, and reversed as to the interest of Ludd and Vail and affirmed as to the others. The case came back to the circuit court. I attended to its disposition, and an order was made, as I remember now, by consent of the parties to the record, fixing the values of Illinois River Railroad bonds at forty cents on the dollar, taking no account of coupons then matured, and the county was ordered to pay the
261 judgments of Ludd and Vail respectively and the costs as to them. I went to the county court and arranged, and the county paid money $7,008.10, the amount due on the Vail and Ludd judgments, and bonds from eight to forty-two inclusive of $500 each were surrendered to the county, and receipts given by the solicitors for the judgments creditors in satisfaction of their claims. In making the settlement there was some small amount of money used in making change, but I do not remember the amount—some ten dollars or so.

Int. 6. Was there any evidence heard as to the value of the bonds at the time the final decree was rendered in favor of Vail & Ladd?

There was not; I drew the order myself, and in reference to it I find it was drawn by consent and signed by the solicitors of the other parties.

Ans. 6. No evidence was heard on that point.

Int. 7. If there is anything else having a bearing in that suit which you desire to state, please state it.

Ans. 7. I am not the judge as to what would have a bearing on the question. I have stated the facts in regard to the final disposition of that part of the litigation, and I do not now remember of any

262 other fact connected with that part of the transaction which I suppose to be of any special value; if, however, my attention were directed to any specific matter I might be better enabled to state.

Int. 8. State if you know anything about the case of Blair and others against Morgan County and other, determined on the chancery side of the circuit court of Morgan County. If so, were you connected with the case in any capacity; and if so, in what capacity?

(Question objected to on the ground that the witness being the solicitor of Morgan County, cannot testify to facts which he acquired from the county while acting as its solicitor, and the sixth answer is objected to on the same ground.)

Ans. 8. I know there was such a case, and I was one of the solicitors of Morgan County in its management,

Int. 9. State what the suit was about.

(Same objection as made to the foregoing question.)

Ans. 9. The record shows what it was about.

Int. 10. State how the case was disposed of.

(Same objection is made as to Int. 8.)

Ans. 10. There was a final decree; as to matters outside I decline to state.

263 Int. 11. Do you know of any arrangement upon which the decree in this case was entered?

Ans. 11. I do.

Int. 12. State what the arrangement was.

(Question objected to as far as it seeks an answer in matters in his knowledge derived from his situation as solicitor.)

Ans. 12. I prefer not to answer it on account of the objection urged to the question.

Int. 13. Do you know anything about the bonds issued by the county to the Illinois River Railroad Company? If so, state if you know where any of them now are, designating them by their numbers.

Ans. 13. I have known a good deal about the bonds; I know that 12 of said bonds were delivered to Henry E. Dummer in the fall of 1867. In March, 1869, there were deposited with me by the county court of these bonds from 61 to 100 inclusive, being 40 bonds. I held them under the conditions imposed until those conditions were complied with, and in July or August, 1869, delivered to Mr. John Allen, as president of the Peoria, Pekin & Jacksonville Railroad Company, bonds from 61 to 80 inclusive, taking his receipt for the whole number and retaining bonds from 81 to 100 pursuant to a contract I had

264 with him some time during that fall, I don't remember the date. I sold bonds No. 81 & 82; and bonds from 83 to 100 have from that time to the present been in my possession as a special deposit in the bank vault of M. P. Ayers & Co. Interest warrants on the 40 bonds from March, 1868, to March, 1869, were taken off the bonds by me before any delivery of the bonds to Mr. Allen, and were applied to the payment for certain services rendered by Morrison and Epler for the county of Morgan, and professional services I was to, and subsequently did, render the county of Morgan, it being the arrangement with the county of Morgan that said services were to be paid for out of that fund, if paid for at all. That neither Morrison and Epler nor Morrison were to have or enforce any claim against the county for said service, subsequent to that time, at the time I made the arrangement mentioned in this answer. I was not acting as solicitor for Morgan County in any case. After I receipted for said bonds giving a written obligation speci-

fying the terms, the county judge brought up the question of these services I have mentioned being paid for out of that fund, and that
265 I must render the services as far as needed in the case of Wm. Thomas against Morgan County. I assented to it in behalf of myself, my partner, Epler, and agreed to arrange the matter with the railroad company, & the written obligation I gave was not modified.

Int. 14. What coupons were on the bonds when you received them from the county?

Ans. 14. My recollection is that the coupon from March 1st, 1868, and subsequent were on the bonds; those prior were taken off by the clerk and myself at the time, and left with the county authorities—they were burned, I think, by the clerk. The coupon falling due March 1st, 1869, and the subsequent coupons were on the bonds when I received them; the others were cut off as I have stated.

Int. 15. Are you acquainted with the value of matured obligations and coupons of the county since 1860?

Ans. 15. I was more or less familiar with the county affairs, more particularly from the beginning of the litigation over the Illinois R. R. Road bonds in 1862 up to 1868 & 1869, since that time my knowledge has been not so familiar but general. I have never known dur-
266 ing that time of the matured obligations of the county—undisputed—being below par, or unpaid, after maturity.

Cross-examined:

Int. 1. Have you any interest, any pecuniary interest in the result of this suit?

Ans. 1. I have.

Int. 2. Have you any recollection whether in the final disposition of the suit brought by Elliott & Brown any portion of the bonds of the Illinois River Railroad Company on the coupon were applied to the payment of the costs and the fees of the solicitor of Elliott & Brown?

Ans. 2. I have.

Int. 3. How much?

Ans. 3. Two hundred dollars solicitors' fees—their might have been some small items of costs also.

Int. 4. At what time did you cease to be the solicitor of Morgan County?

Ans. 4. I cannot give date from recollection nor do I know certainly. The case of William Thomas vs. Morgan County was pending in the supreme court, same term, and an argument was ordered. I argued that case individually, and consequently received notice of the
267 order for reargument; Edward Scott having come into power and having assumed a hostile position towards me, I wrote him a note asking him whether I should reargue the case, and stating in substance that his relation to me was such that unless he expressed a desire that I should I would not. That note is yet without answer; a short time after, Mr. Dummer and I had a conversation about it in which I called his attention to the fact, in which he said he would look into the matter, and if he thought anything was necessary he would let me know. I heard nothing further from it, and consequently cannot tell when I did cease to be solicitor for Morgan County. The reargument was ordered, I think, by the new court organized under the new constitution at its first term. What I have said has reference to my relation to the county in its suit of William Thomas vs. Morgan County, reported in 39th Ill's Reports. Cyrus Epler and I were the solicitors

of Morgan County in the case of Blair and others vs. Morgan County before referred to. That case in final decree was rendered in at
268 the November term, 1867. Mr. Epler and I were the solicitor' of Morgan County in a case in the U. S. circuit court for the southern district of the State of Illinois, as I remember it, of Studwell Hopkins and Cobb, trustees. I prepared the answer of Morgan County in that case. I think it was filed in Jan'ry, 1868. Not long after that, at what term I do not remember, that suit was dismissed by the complainant, and in the dismissal of that suit my relations to the county as solicitor ceased. From that time until the delivery of the bonds in March, 1869, when I was employed in the Thomas case, I was not the solicitor or attorney of Morgan County in any case that I remember of. My relation to the county as solicitor or attorney, was in such cases as I was particularly employed in.

Int. 5. Did this suit of William Thomas vs. Morgan County of which you have spoken, have relation solely to these Illinois River Railroad bonds?

Ans. 5. It had relation solely to his asserted claim to $4,000 of them and was the same claim involved in the original suit in which Elliott & Brown's interpleader was filed.

269 Int. 6. Did the suit of Studwell and others vs. Morgan County have relation solely to those Illinois River Railroad bonds?

(Question objected to as improper in cross-examination.)

Ans. 6. Studwell, Hopkins & Cobb, as I understood it, were the trustees named in a deed of trust executed by the railroad company in its road—they were made parties by Elliott & Brown, and asked to come in and assert their claims to these bonds—they answered and filed a cross bill and raised the question whether their bonds did not pass by virtue of the trust deed. The suit of Studwell, Hopkins, and others, in the U. S. circuit court, if that is what is referred to in the question, was designed, as I understood it from an examination of it, to reach the said Illinois River Railroad bonds on the ground that they were judgment creditors of the Illinois River Railroad Company.

Adjourned to Wednesday morning, March 15, 1876, at 9 o'clock a. m.

HENRY STRYKER, JR.

270 WEDNESDAY MORNING, *March* 15, 1876.

Pursuant to adjournment I proceed with the cross-examination of the witness I. L. Morrison.

HENRY STRYKER, JR.

Int. 7. You have spoken of fees to the amount of $1,200 paid yourself and Epler out of the coupons of the Illinois River Railroad bonds issued by Morgan County for services in suits involving the said bonds now in controversy. Did the county of Morgan, so far as you know, pay other attorneys' or solicitors' fees in suits where the same bonds were the subject-matter of litigation; and, if so, to whom, when, and how much?

(Question objected to as improper cross-examination.)

Ans. 7. The service I spoke of as having been rendered in payment of which the $1,200 were applied included the services I rendered after the dissolution of the firm of Morrison & Epler. The county of Morgan paid for the service of Morrison & Epler rendered the county from the beginning of the litigation of Ludd & Vail in Peoria and Mason County until final disposition of the litigation in the chancery
271 suit in Morgan County, and the payment of the money in the Ladd & Vail judgment in June, 1866. The payment of fees by the county was made, I think, in latter part of 1866—the sum of $3,500

was paid. By arrangement between Mr. Epler and myself the fees for these services were coming to me. A county order was issued, which I collected. By agreement of the county court the matter was submitted to Judge Treat to say what was a proper allowance. He fixed it at said sum, and the county paid it. I do not remember of any other payments. The $1,200 was paid for fees in cases of Blair vs. Morgan County, Studwell vs. Morgan County, and Thomas vs. Morgan County. There was no agreement with the county that $1,200 or any other specified sum should be paid for those services, but on the delivery of the $20,000 bonds and the coupons it was understood, as I before stated, that for those professional services neither Morrison & Epler or myself were to claim anything further from the county. I then took off the coupons after the conditions on which I held them had been complied with by the Railroad Company, and applied the coupons in discharges of
272 their claim, and delivered the bonds to John Allen, president of the Railroad Company. Subsequently I explained to the president of the Railroad Company the reasons for that application, and no objection was made to my knowledge. I do not remember that I had any conversation afterwards with the county court after the bonds were delivered to me about those services until after the litigation commenced with the Railroad Company and against myself.

Int. 8. Was all those suits in which the fees were paid by Morgan County, as stated by you, suits in which the county of Morgan were trying to preserve the bonds now in controversy, and prevent their being taken from the custody of the county of Morgan?

Ans. 8. The record in those several suits will show what Morgan County claimed, but to state as near as I can at this time, without referring back to the papers, the substance of Morgan Count*ie*'s claim, was that the deposit of bonds referred to with Elliott & Brown was under an agreement, as claimed by the county, that said bonds were to be used by the Railroad Company in payment for material and labor
273 in constructing that part of the Ill's River Railroad in Morgan County; that the Railroad Company had failed, was insolvent, without having done anything toward that part of the road except the preliminary survey. Morgan County denied the right of the Railroad Company to appropriate any of the bonds for any other purpose; they made no claims that I remember of to preserve these bonds for the Illinois River Railroad Company or anybody else, but claimed that they were applicable, under the agreement referred to, for the building of the road within her limits. This is substantially the ground taken by Morgan County, according to my recollection, in the litigation between Elliott and Brown and the various other parties mentioned. The suit of Blair et al. vs. Morgan County involved the same bonds or part of them. The county of Morgan set up substantially the same defense, and, in addition denied the validity of the alleged judgments, or the most of them, set up in the Blair suits. In the United States courts, in the case mentioned, the county of Morgan set out, as I remember, a copy of the record in the Blair cases, showing by the decree that the circuit court of Morgan County had decreed the delivery of the bonds, and;
274 as a consequence, their were no bonds in the custody of Morgan County. In the case of William Thomas, the county relied in the decision rendered in the first case referred to as a bar.

Re-examined:

Int. 1. In your agreement with the county in reference to your fee of $3,500, did the complainants in this suit, or any other creditors of the

Illinois River Railroad Company, have anything to do with it, or in any way acquiesce in or consent to it?

Ans. 1. The complainants in this suit were not parties litigant in any of those suits that I remember, nor did I have any personal acquaintances with either of them at that time. No one except the officers representing the county of Morgan, so far as I know, had anything to do or say in the matter. They were not consulted, so far as I know, with reference to it. The agreement of Morrison & Epler with the county was an implied agreement to pay for services, and the matter was subsequently settled in the manner I have spoken of; no one else consenting or objecting, so far as I know.

275 Int. 2. This amount, as I understand you to say, was paid to you in a county order, which you subsequently got the money on?

Ans. 2. There was a county order issued for $3,500; whether issued in the name of Morrison & Epler, or to me individually, I do not remember; probably the former. I receipted for the order, and got the benefit of it.

Int. 3. The $1,200 you received was obtained by detaching the coupons due March, 1869, from the $20,000 bonds delivered to the P. P. & J. Railroad Company?

Ans. 3. As before stated, I took off the coupons from the 40 bonds above spoken of, and after the road was completed to Jacksonville, and I delivered the bonds to the company, I deposited the coupons to my credit with M. P. Ayers & Co., and supposed the county paid them.

Int. 4. You stated that in the case of Blair et al. vs. Morgan County et al., the county relied on the defenses that the Morgan County bonds were to be applied to the payment for work done in Morgan County, and questioned the validity of the judgments of the complainants in that suit. State to what extent and in what manner the county made those defences.

276 (Question objected, because calling for what is a matter of record, or for matter that comes to his knowledge from Morgan County as its solicitor, and not proper as to matter of re-examination.)

Ans. 4. I here state one other position taken by Morgan County, which did not occur in my answer to int.: In the Blair case vs. Morgan County et al., Henry T. Thomas, as adm'r of R. S. Thomas, deceased, and I think a man by the name of Low, were made parties complainant after the original bill was filed, and by leave of the court said Henry T. Thomas setting up a judgment alleged to have been rendered in his favor as administrator vs. the Ill's R. R. Company. The county took the ground, as I recollect, that the claim upon which said judgment was based were the same claims which Richard S. Thomas, then deceased, had asserted in the original litigation commenced by the bill of interpleader of Elliott & Brown, the county taking the ground that that claim had been adjudicated in favor of the county and against Thomas in that case. The cases known then as the Blair cases, after amendment as above indicated, were disposed of by the circuit court,

277 and a decree taken, as appears of record, without the introduction of evidence on the part of Morgan County, in consequence of an arrangement made with the solicitor of complainants. While I do not understand this matter to be within the rule of privileged communications, I prefer not to answer because the facts can be easily elucidated by others, and I do not wish to occupy the position, where there is any uncertainty about it.

(OBJECTION.—The same objection is made to the answer as to the question.)

ISAAC L. MORRISON.

Deposition of H. G. Whitlock.

HERBERT G. WHITLOCK, being next produced, sworn and examined, testified as follows:

Int. 1. State your name, age, residence and occupation.

Ans. 1. Herbert G. Whitlock, am 40 years old, reside in Jacksonville, Illinois, am engaged in the practice of law.

Int. 2. State how long you have resided in Jacksonville, and in Morgan County, Ill's?

Ans. 2. In Jacksonville permanently since 1865; in the county all my life.

Int, 3. Did you ever hold any official position in the county, and if so, what, and for what years?

278 Ans. 3. I was county judge from Dec., 1865, to Dec., 1869.

Int. 4. Have you had any knowledge of bonds issued by Morgan County to the Illinois River Railroad Company? If so, state in what way.

Ans. 4. I was a resident of the county when the vote was taken for the issuing of the bonds and knew generally of the fact of their issuance. My attention was particularly called to the existence and condition of the bonds, after I became county judge.

Int. 5. Have you any recollection of a suit pending in the Morgan County circuit court on the chancery side in 1866, entitled Henry Thomas, adm'r of Richard S. Thomas, deceased, vs. Morgan County and others, in reference to the bonds?

Ans. 5. I have.

Int. 6. State how the value of the bonds mentioned in the final decree in that case was arrived at, if you know?

Ans. 6. The values of the bonds according to my recollection was arrived at by consent of parties; there was no proof taken as to the value.

Int. 7. What was the object, if you knew, of consenting to a value or fixing a value?

Ans. 7. As I recollect, to get as many of the bonds out of the
279 way as possible, not knowing but that there might be other litigation about them. This was the object in the part of the county.

Int. 8. Have you any recollection of the order made by the county court in reference to satisfying that decree?

Ans. 8. I recollect there was an order made; I do not remember the contents of the order.

Int. 9. Do you know what became of the 35 bonds mentioned in that order of the county court. If so, state all you know about it.

Ans. 9. My recollection is they were taken up and cancelled—I believe I cancelled them myself as county judge.

Int. 10. Have you any recollection of a suit pending in the chancery side of the Morgan circuit court, of Blair and others vs. Morgan County and others, in reference to the bonds of Morgan County to the Illinois River Railroad Company?

Ans. 10. I have.

Int. 11. State if you know the basis on which the final decree in that case was rendered; if so, state what you know about it.

Ans. 11. It was rendered by consent of parties, Judge Dummer representing the complainants.

280 Int. 12. State if there was evidence heard in which to barr the decree, or whether it was upon any agreement, and if an agreement, state the agreement, and facts connected with it, and whether it was in writing or not?

Ans. 12. There was no evidence heard; my recollection is clear that no evidence was heard; it was agreed that it should be decreed that the Morgan County bonds should be delivered in payment of the claims of Blair and others, and that claim should be satisfied by the payment of $6,000 cash to the claimants and $6,000 in bonds, the coupons detached; the agreement as to the payment of the said cash and bonds was in writing.

Int. 13. State who prepared and signed the contract or agreement?

Ans. 13. It was prepared and signed by Mr. Dummer, the solicitor for the complainants.

Int. 14. Have you the agreement or can you produce a copy of it, if we attach a copy to your deposition and mark it Exhibit A?

Ans. 14. I presume I have it, but I looked through my papers this morning and could not find it; I have a copy which I find attached as
281 an exhibit to the deposition I formerly made in a cause growing out of litigation about them bonds, the case of Morgan County vs. The P., P. and J. Railroad Company et al., *at* which I verified at the time, and am sure is correct, which I file herewith and mark Exhibit A.

Int. 15. State to whom that original agreement was delivered, and whether it was before or after the entry of the decree, and who has had possession of it since that time?

Ans. 15. To me at the time the decree was prepared, but before it was entered. I had possession of it from that time to the time my deposition was taken, and I presume I have it yet.

Int. 16. Who first proposed that manner of bringing about a settlement of the case, and the object of the party proposing, if you know, in bringing about its settlement and the object of the county in accepting it?

Ans. 16. I am of the opinion that the proposition was first made to me by Mr. Dummer, solicitor for Blair and others. It was state' to me in conversation by him that by permitting the settlement to be made as it was made, and having such a decree rendered as was rendered, we
282 could defeat the suit in the U. S. circuit court vs. Morgan County, and make a settlement advantageous to the county of the litigation growing out of the bonds. To make such settlement was the object of the county or of myself, acting as the agent of the county.

Int. 17. Was there anything said or any reason given for expediting the settlement of this case at that time; if so, by whom, and what was said?

Ans. 17. It was thought advisable by Mr. Dummer and the attorney for the county, Morrison & Epler, and myself, as county judge, to hurry the matter through and get a final decree before the commencement of the January term of the U. S. circuit court at Springfield, so as to use that decree in defeating that suit in the U. S. circuit court.

Int. 18. State who the complainants were in the case in the U. S. circuit court.

Ans. 18. Alexander Studwell, Lucius Hopkins, and Cobb, trustees.

Int. 19. State whether the $6,000 in money and $6,000 in bonds were delivered in pursuance of the contract referred to; if so, by and to whom.

283 Ans. 19. The bonds, as I recollect, were delivered by me per-

sonally to Mr. Dummer. The money was paid by the county; but I cannot state who handed it over. I presume it was paid in a county order.

Int. 20. When was that done, with reference to the time the agreement was made?

Ans. 20. My recollection is the bonds were delivered at the time the agreement was made; but as to the payment of money, I cannot state.

Int. 21. State whether the case entitled in Exhibit A is the same case as the case of Blair and others vs. Morgan County and others.

Ans. 21. It is the same case.

Int. 22. State what was done with the bonds and coupons mentioned in the final decree (other than the $6,000) in the case of Blair and others vs. Morgan County and others, after the agreement was made.

Ans. 22. They were delivered to me and kept in the custody of the county until March, 1869, as I now recollect, when $20,000 of them (40 bonds) were delivered to Isaac L. Morrison, to be held by him for the Peoria, P. and J. R. R. Company, to be allowed to it when its road should be built and its cars running into Jacksonville; the bal-
284 ance of the bonds and coupons were, by order of the county court, destroyed.

Int. 23. At the time of the agreement, in whose custody were the bonds and coupons mentioned in the Blair decree? Who received them from the custodians and delivered them to you, and were any of them, except the $6,000, ever delivered to or in possession of the complainants in the Blair case, their solicitor, or Judge Berdan, the master in chancery appointed in the Blair case?

Ans. 23. The bonds had been in the custody of M. P. Ayers & Co. I have no knowledge of them ever having been in the possession of Judge Berdan. He was in the room at the time the bonds were delivered to me. My best recollection is that the bonds were delivered to me by Mr. Morrison. I don't think that any of the bonds, except the $6,000, were ever in the hands of the complainants in that suit or their solicitor.

Int. 24. Since your time of office began, what has been the value of matured obligations against the county, if you know?

Ans. 24. During my term of office the' were always at par. Since then I have understood they have been uniformly at par.

285 Int. 25. During your term of office, were there other railroad bond coupons falling due against the county; if so, state whether or not they were promptly paid at maturity or when presented?

Ans. 25. There were other railroad bonds with coupons attached and paid by the county, payable at the American Exchange Bank in N. Y. Arrangements were always made during my term of office to pay them when due.

Cross-examined:

Int. 1. Was you present in court when the case of Blair and others vs. Morgan County and others was disposed of by the court?

Ans. 1. I think not. At least I have no recollection of being present.

Int. 2. After the paper signed by Mr. Dummer, relating to the disposition of the suit of Blair & Co. vs. Morgan County, came to your possession, was it not modified by parol in two respects: 1st, that complainants were to pay the costs of the suit; and 2nd, that if William Thomas should decline to take a pro rata share with the complainants in the Blair suit, the $12,000 should be divided pro rata among the
286 complainants in the Blair suit?

Ans. 2. I have no recollection of any parol modifications, and

feel very confident that none was ever made with me or by my knowledge. As to the payment of costs, my impression is that was understood before the agreement was made.

Int. 3. I see by reference to a deposition made by you that in the case of Morgan County vs. The Peoria, P. & J'ville Railroad Company, you say that *that* at the time of the rendition of the decree (referring, as I understand, to the Blair cases), "I think the bonds were in the hands of the special master; $6,000 in amount were delivered to the solicitor of the complainants, and the balance delivered to the county judge." What is now your best recollection on that point?

Ans. 3. My answer is, I have given my best recollection of the matter in my answer in chief in my present deposition.

Int. 4. What was the condition of the claims of the complainants in the Blair case after the payment of the $12,000 to them, according to your understanding of the arrangement made by you with Mr. Dummer; did they belong to the county of Morgan or to the complainants in the Blair suit?

(Objected to for incompetency.)

287 Ans. 4. I have no interest in the claim of the complainants in the Blair suit or in their condition, or in their ownership. We paid Mr. Dummer the $12,000 in satisfaction of them, and have never thought anything further as to their ownership or condition.

Int. 5. How early, as nearly as you can recollect, was the proposition made to you to dispose of the Blair suit substantially as it was disposed of at the time it was first made? Did you know of the pending of the suit of Studwell et al. vs. Morgan County in the U. S. circuit court?

Ans. 5. I cannot state when the first suggestion was made to me; but it was after I knew of the pending of the Studwell suit. I am of opinion it was during the term of court at which the decree was rendered.

Re-examined:

Int. 1. During your term of office or during any other term in your knowledge, was there money deposited in the American Exchange Bank of N. Y. City, where the coupons on the bonds of the county to the Illinois River Railroad Company were made payable, or any arrange-

288 ments made with that bank to meet the payments of the coupons as they fell due?

Ans. 1. I think not.

Int. 2. State whether or not you were an active member of the court during the settlement and progress of the Blair case, and would have known whether any testimony was taken in the case before the decree, or any preparation made for a hearing, and for the introduction of testimony.

(Question objected to because it asks for an opinion or inference; and 2nd, because it is not a proper re-examination; and 3rdly, if answered in the affirmative, it does not tend to prove whether evidence was or was not offered in this disposition of the Blair case.

Ans. 2. I was the judge of the county court, and resided in Jacksonville; the associates lived away from Jacksonvill', and I was familiar with the details of the case during the progress, and had special charge of it, acting for the other members of the county court, and was in position to have known if any testimony had been taken. I was in a posi-

289 tion to have known, and think I would have known, if any testimony had been taken, or preparation for the introduction of testimony had been made.

H. G. WHITTOCK.

The hour of six o'clock having arrived, I adjourned the taking of depositions in this case to Thursday, March 16, 1876, at 9 o'clock a. m., at the same place.

March 15, 1876.

HENRY STRYKER, JR.

Deposition of H. B. McClure.

THURSDAY, *March* 16, 1876.

Pursuant to adjournment, I proceed with the depositions in this case.

HENRY STRYKER, JR.

HENRY B. MCCLURE, a witness of lawful age, was next produced, by me first duly sworn, and he testified as follows:

Int. 1. State your name, age, and residence.

Ans. 1. Henry B. McClure; am 65 years old, and reside in Jacksonville, Illinois.

Int. 2. During the year 1866, what was your occupation?

Ans. 2. A practicing attorney in Morgan County, Ills.

290 Int. 3. Were you ever connected with the case of Henry T. Thomas, adm'r of the estate of Richard S. Thomas, deceased, vs. Morgan County et al., on the chancery side of the circuit court of Morgan County, relating to the bonds issued by Morgan County to the Illinois River Railroad Company; if so, in what capacity, and who were the attorneys in the case?

Ans. 3. I was connected with that case as solicitor for Joseph Ladd, who was a judgment creditor of the Illinois R. R. Company, and who had filed a bill in chancery vs. the Illinois Railroad Company, Morgan County, Richard S. Thomas et al., for the purpose of satisfying his demand out of the bonds in question, which had been issued by Morgan County to the Ills. River Railroad Company. Richard S. Thomas, and, afterwards, Henry T. Thomas was represented by Henry E. Dummer, esq. Isaac Vail, who was also a judgment creditor of said R. R. Company, was also represented by Henry E. Dummer, esq. Morgan County was represented by Isaac L. Morrison, esq. William Thomas was his own representative, and I think Mury McConnell represented Studwell, Hopkins & Cobb.

291 Int. 4. How was the value of the bonds mentioned in the final decree in that case arrived at, and what was the object of fixing the values on them?

Ans. 4. The above case was taken to the supreme court. After it was remandeded to the circuit court of this county, the decree was prepared by agreement; it was agreed that Dummer and myself, for our clients, Joseph Ladd and Isaac Vail, should receive what was due to us in money from the county, and the decree might be so drawn and subsequent proceedings so taken as would best promote the interest of the county. I did not see the decree before it was recorded. The money coming to our clients was paid to us, and I paid no further attention to the proceedings. I do not remember what the decree said about the value of the bonds.

Int. 5. Do you know who prepared the decree?

Ans. 5. Mr. Morrison was the only counsel representing the county; while I did not see the decree written by him, I have no doubt it was written by him.

Int. 6. Your attention is here called to what purports to be a
292 copy of the decree in that case; look at it and state if remember having signed that decree?

Ans. 6. I see what purports to be a copy of said decree before me, with my name as solicitor for William M. Dodge, administrator, signed to the same; I now remember that Ladd died during the proceedings, and that Dodge was his administrator; I have no distinct recollection of signing the decree, but after refreshing my memory by the paper before me, I think I probably did do so.

Int. 7. In fixing the value of the bonds, state whether that was left to the solicitor of Morgan County, and state whether any evidence was taken as to the value.

Ans. 7. I had no interest in the decree whatever, except to get the money for my client. This was paid to us with the understanding that the county protected herself in such way as she thought proper. To the best of my recollection neither Mr. Dummer nor myself had anything to say about the price at which the bonds should be rated. We left the county to do as she pleased. I do not know anything about any evidence being taken as to the value of the bonds.

H. B. McCLURE.

293 *Deposition of E. R. Elliott.*

EDWARD R. ELLIOTT was next produced, by me duly sworn, and he testified as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. 1. Edward R. Elliott; am 52 years of age; reside in Jacksonville, and am engaged in the banking business.

Int. 2. How long have you been engaged in the banking business in Jacksonville, and was William Brown, deceased, your partner at any time, and for what period, and if he is deceased, when did his death occur?

Ans. 2. I was with Judge Brown as a partner in the banking business from 1856 for 18 months or two years next ensuing, as I recollect. I was then out of business some 8 or 10 years, and then resumed the business in the firm of Hockenhull, King, and Elliott, in which I still continue. William Brown died some 4 or 5 years since.

Int. 3. State if you remember giving a deposition in the year 1865, in the suit of Richard T. Thomas vs. The County of Morgan, in reference to the issue of bonds of Morgan County to the Illinois River Railroad Company; if so, if you have the deposition, you may examine
294 the same and stat' what you know in reference to the delivery of certificates of shares of stock of the Ills. River Railroad Company in favor of Morgan County.

Ans. 3. I do remember giving such deposition. My recollection is that the bonds were left with Elliott and Brown, to be delivered to the Illinois R. R. R. Company upon receipt of certificates of stock in the road. A certificate of stock was delivered to Elliott & Brown, and a letter of Elliott & Brown to Dr. Schooly, dated Dec. 7, 1857, refreshing my memory on this point.

Int. 4. State whether that letter was sent to Dr. Schooly, and also state what position said Schooly had, if any, in regard to the company, and how the letter again came in possession of Elliott and Brown.

Ans. 4. I believe the letter was sent to Dr. Schooly. He was the secretary of the Illinois River Railroad. I do not know whether the letter ever again came into the possession of Elliott & Brown.

Int. 5. State in whose handwriting the letter is?

Ans. 5. In the handwriting of Judge Brown, of the firm of Elliott & Brown.

Int. 6. If you have the original before you, may state in what
295 condition it is in reference to your said deposition, and if it is out of your power to attach the original letter to this deposition you may attach a copy of the letter to this deposition, marking it Exhibit B.

Ans. 6. The original letter is before me, and it is attached to my said former deposition. I attach a copy of it to this deposition, and mark it Exhibit B.

Int. 7. By whom, if any one, were you authorized to secure the certificate of stock.

Ans. 7. By Judge Berdan, then the county judge of Morgan County. That is my recollection.

Int. 8. State if any of the coupons on the Morgan County bonds to the Illinois River Railroad Company were detached at the time you received them; if so, what coupons, and by whom detached?

Ans. 8. The first set of coupons (March, 1858) were detached by some one in the office by order of Judge Berdan and destroyed.

Int. 9. For what reason were they detached, if any was given?

Ans. 9. That the county did not wish to pay interest before the work was begun in the county.

Int. 10. State whether or not the coupons or the bonds falling due (March, 1859 and 1860) were paid by the county to any one; if
296 so, to whom and by whom?

Ans. 10. It seems that two sets of those coupons were paid. The coupons of 1859 and 1860 were paid by some agent of the county, and the proceeds placed to the credit of the road on the books of the bank.

(Answer objected to, as the answer indicates that it is made from some other paper, and that it is not given on the recollection of the witness.)

Int. 11. What is your present recollection as to the payment of the coupons as stated in your last answer?

Ans. 11. I have no distinct recollection, but I have an impression, having refreshed my memory by reading my former deposition, that the coupons were paid and applied as I have above stated.

Int. 12. At the time when your deposition was taken, were the facts relating to these matters fresh in your mind.

Ans. 12. They were.

Int. 13. State if any other coupons were paid after March 1st, 1860; and if not, state the reason why, if you know.

Ans. 13. I find a little difficulty in answering the question. I
297 cannot recollect as a matter of memory when instructions were given by Judge Cassell, county judge, that the coupons would not be paid, and Elliott & Brown instructed not to deliver. I mean I cannot recall whether it was the set of 1861 or 1862 that we were instructed not to deliver, but it was about that time. I was not a member of the firm at that time, but I was informed of those instructions by Judge Brown.

Int. 14. State if at any time the Illinois River Railroad Company, its agents or creditors, ever demanded these bonds, or any of them, or the payment of any of the coupons; if so, state what time as near as you can.

Ans 14. I remember a demand for part of these bonds, an order to Judge Thomas and one to Richard S. Thomas. After these instructions from Judge Cassells to Elliott and Brown, Elliott & Brown decline to deliver them.

Int. 15. State, as nearly as you can, when these demands were made.

Ans. 15. I could not without reference to papers to which I have no access now; it was not a great while after the instruction.

298 Int. 16. Was it before or after the filing of the bill by Elliott & Brown in reference to their bonds?

Ans. 16. My impression is that it was before.

Int. 17. What have matured obligations against the county been worth since 1860; have they ever been below par?

Ans. 17. I have had nothing to do directly with them, but my impression is that they have been paid promptly.

Int. 18. Is Judge Cassell living; if not, when did he die?

Ans. 18. He is not living, but died a number of years before Judge Brown died.

Cross-examined:

Int. 1. You have spoken of instructions given Elliott & Brown by Cassell, judge of the Morgan County court; what were those instructions; did they extend to the bonds as well as the coupons?

Ans. 1. The instructions were not to deliver the bonds (and I suppose it covered the coupons) to the Illinois River Railroad Company, and the county was to guarantee us, make us safe in holding them against any damages in not surrendering them. I understood there would be

299 a note or order of the court to that effect, but I never looked to see whether they made it or not.

Int. 2. Do you not recollect that the reason assigned for not delivering the bonds was that the Illinois Railroad Company and the county of Morgan had agreed that the bonds were not to be delivered except for work done in Morgan County on the road by the Illinois Railroad Company?

Ans. 2. I recollect distinctly that the understanding was that this subscription of the county, the bonds and coupons were to be used for work done in the county; I understand that from recollection of what R. S. Thomas said and what Judge Berdan said. They were not together at the same time; but I do not recollect any conditions attached to delivery when the bonds were left with Elliott & Brown for that purpose. In separate conversation held with Berdan and R. S. Thomas it was understood that they would be used solely for work done in Morgan County.

Int. 3. Was or not R. S. Thomas the president of the Illinois River Company at time *time*?

Ans. 3. He was.

Int. 4. How early did you understand from R. S. Thomas and

300 any Morgan County official that the bonds in controversy were not to be delivered except for work in Morgan County?

Ans. 4. I suppose not prior to the instructions from Judge Cassell.

Int. 5. Can you fix the date of the instruction from Cassell to Elliott & Brown?

Ans. 6. I cannot answer, except as answered in response to Int. 13.

Int. 7. At what time did you first get from R. S. Thomas, president of the Illinois River Railroad Company, any understanding that the Illinois River Railroad bonds, issued by Morgan County, were to be used only for work done in Morgan County, if you did get that understanding from him?

Ans. 7. As early as August, 1857, R. S. Thomas, president of the road, informed Elliott & Brown that the bonds would be placed in their hands to *to* be paid out for work done in Morgan County, as other sub-

scriptions made by citizens, and this information was given at a time when he wished the county to issue the bonds, and have representatives in a meeting of the b'ard of directors—which information was prior to the issue of the bonds.

Int. 8. I understand you to say, in substance, that when the
301 bonds in controversy were first delivered to Elliott and Brown, that the coupons due March 1st, 1858, was detached by Judge Berdan, director, in assigning a reason that the county did not want to pay interest before work was done in Morgan County; did you not at that time understand that neither bonds nor coupons were to be paid out except for work in Morgan County?

Ans. 8. My understanding was that the bonds were not to be delivered to the road until those coupons were detached. My understanding was that the bonds would be used in payment for work in Morgan County, but I do not mean that this was made a condition of the delivery of the bonds by Elliott & Brown. There were 2 or 3 setts of Morgan County bonds for different railroads brought in by Judge Berdan and Mr. Stacy, and filled up in the office, and they were left there after being signed by Judge Berdan and Mr. Stacy, the clerk, and the associate judges would sign them as they came in time. Two of the setts were removed, and the third, the Illinois River Railroad bonds, left; this, with instructions to deliver on receipt of the certificate of stock before referred to.

Int. 9. To what railroad companies were these bonds payable
302 other than the Illinois River Railroad Company?

Ans. 9. I am not certain; I think one was the Tonica and Petersburg, and the other the St. Louis road. I don't know the title; I think Jacksonville and Carrolton.

Int. 10. When, as nearly as you can state, were the Morgan County bonds issued to the Tonica and Petersburg company, and the company you term the St. Louis road, delivered, and to whom?

Ans. 10. After so long a time, I do not remember distinctly whether the county judge took them away in person or gave an order; but they were taken away from our office shortly after they were ready.

Int. 11. Are we to understand you that none of the bonds for these three companies were placed in your custody, except the bonds issued to the Illinois River Railroad Company? Was there any distinction made as respects those three roads as far as regards the custody of the bonds—were the bonds for the Tonica or St. Louis roads ever in your charge or custody?

Ans. 11. My recollection is that the bonds of the other roads was not left with us in the same way that the bonds of the Illinois River
303 road were. I do not remember precisely how the other bonds were removed. The Tonica and St. Louis bonds were with Elliott & Brown for safe-keeping, but I don't remember any instructions concerning them. They were never in our possession, as the Illinois River Railroad bonds were—they were never left in our vault by the railroads.

Int. 12. Can you state that the bonds issued to the Tonica and Petersburg and the St. Louis company were not delivered by Elliott & Brown to said companies, or some officer thereof, upon them leaving with you certificates of stock?

Ans. 12. I cannot. I do not remember the precise mode of delivery. I have no paper to refer to, and I do not remember.

Int. 13. Can you give any reason why the bonds in controversy were not delivered to the Illinois River Railroad Company, or some officer thereof, at the same time, or about the same time, the bonds were de-

livered to the other companies; that is, as soon as they were signed and ready for delivery, and certificates of stock had been received by Elliott & Brown?

Ans. 13. I cannot; I suppose they were delivered about the
304 same time. In using the time delivered, I mean the time when we received the certificates of stock from the road.

Int. 14. Did the Illinois River Railroad Company or any officer thereof ever apply to Elliott & Brown for the actual custody and control of the bonds in controversy; and, if so, at what time, and what was done on such application, if anything?

Ans. 14. My recollection is that there were demands for a part of the bonds. One order in favor of Judge Thomas, and one in favor of R. S. Thomas; these were orders from the railroad company. It was after the instruction of Judge Cassell not to deliver we declined to deliver.

Int. 15. Were you well acquainted with R. S. Thomas, the president of the railroad company, at that time?

Ans. 15. I had a business acquaintance with him of a year or two.

Int. 16. From the time the bonds were put with you by Berdan and Stacy up to the instructions from Cassell, how often was R. S. Thomas in the bank?

Ans. 16. During the 12 or 18 months I was in the firm R. S. Thomas came in the bank frequently: several times in a fortnight. We had frequent business correspondence.

305 Int. 17. During the period of time you refer to in your last answer, did R. S. Thomas ask to have the actual custody and control of these bonds for the company?

Ans. 17. I do not remember any such request.

Int. 18. At the time Elliott & Brown refused to deliver bonds to William Thomas and R. S. Thomas on the orders of the company, did R. S. Thomas or any officer of the Illinois River Railroad Company requir of Elliott and Brown an explanation why they did not honor their orders?

Ans. 18. I think I was not present, having ceased to be a member of the firm, and I do not remember any of the particulars.

Int. 19. In your former deposition to which you refer, I understand you to testify as follows: "My understanding is that some authorized agent of the county, after March, 1859, deposited money at the bank to the credit of the railroad company, and took the coupons, and the same thing was done with the coupons in 1860. I knew this from the books. I was not present at the time, that I recollect"; is that statement your present recollection?

Ans. 19. Not having referred to the books, but to that deposition, I have no doubt that is correct.

306 Int. 20. Do you know whether or not the money referred to in your last answer was applied to the payment for surveys of the route of the Illinois River Railroad within the limits of Morgan County?

Ans. 20. I do not know without referring to the books, but I think most likely it was, and have a recollection of monies being applied in that direction.

Re-examined:

Int. 1. State whether or not the firm of Elliott & Brown were the bankers in Jacksonville for the Illinois Railroad Company at the time spoken of.

Ans. 1. They kept an account with Elliott & Brown. I don't know that they kept an account at any other bank here.

Int. 2. For whom did the firm of Elliott & Brown hold the Morgan County bonds issued to the Illinois River Railroad Company after the delivery of the certificate of stock?

Ans. 2. They considered they were holding them for the Illinois River Road until instructed by Judge Cassel not to deliver, and then they considered they were holding them for the road under protest of the county.

E. R. ELLIOTT.

307 The hour of 6 o'clock having arrived, I adjourned the further taking of these depositions to to-morrow morning, March 17, at 9 o'clock.

March 16, 1867.

HENRY STRYKER, JR.

Deposition of John Allen.

FRIDAY MORNING, *March* 17, 1876.

Pursuant to adjournment of yesterday, I proceed with the examination of witnesses in this case.

JOHN ALLEN was next produced and sworn by me according to law, and then examined, and he testified as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. 1. John Allen; 61 years old; reside in the town of Old Saybrook, Middlecox County, Connecticut; am now occupied as the president of the P. P. & J. R. R. Company.

Int. 2. Are you one of the complainants in this suit; if so, of what State were you a citizen, and where did you reside at the commencement of this suit?

Ans. 2. I am one of the complainants in this suit. At the commencement of this suit I was a citizen of Connecticut, and resided in
308 the town of Old Saybrook in said State.

Int. 3. Are you acquainted with the other complainants; if so, of what State or States were they citizens, and where did they reside respectively at the commencement of this suit?

Ans. 3. I am acquainted with the other complainants; they were citizens of the State of New York, and resided in the city of New York, in said State, at the time of the commencement of this suit.

Int. 4. If you know, you may state who were the owners at the commencement of this suit of the bonds and coupons or warrants thereunto belonging issued by the Illinois River Railroad Company, amounting to the sum of one million and twenty thousand dollars, being 1,320 in number, and secured by deed of trust executed by said railroad company to Alexander Studwell, Lucius Hopkins, and George T. Cobb, trustees, and you may also state who are the present owners thereof.

Ans. 4. The complainants in this suit, Aaron Arnold, Edwin Trowbridge, and myself individually, were the owners of said bonds and coupons at the time of the commencement of this suit; they were
309 then in my possession, and the same parties are the present owners thereof.

Int. 5. When did the complainants become such owners?

Ans. 5. They became such owners of between $850,000 and $900,000 of the principal of such bonds with coupons attached, in April or May (if I recollect right), of 1862, and subsequently they became the owners

of the remainder of such bonds and coupons and prior to the 15th of March, 1868.

Int. 6. Have you the said bonds and coupons now in your possession; if so, can and will you now produce them?

Ans. 6. I have them here, and now produce them; they are contained in this box.

The parties here agreed that the bonds may be left with the examiner, who may examine them and compare them, and state the result of his examination in his report, attaching an original $1,000 and $500 bond to his report.

HENRY STRYKER, JR.

Int. 7. State whether or not these are the only bonds and coupons that was ever secured by the trust deed of the Illinois River Railroad Company to Studwell, Hopkins, and Cobb, as above mentioned.

310 Ans. 7. I know of no other bonds. I never heard of any other bonds, and I recognize the signature Lucius Hopkins, G. T. Cobb, and A. Studwell, affixed thereto as trustees, as being the genuine signature of George T. Cobb, Lucius Hopkins, and Alexander Studwell, the original trustees named in the deed of trust.

Int. 8. Did you ever see any of the bonds that were issued by Morgan County to Illinois River Railroad Company; if so, did you ever have any of them in your possession; if so, state what amount and numbers, how they came into your possession, and what has become of them; and if you have any receipt from Morgan County for any of them, attach the same to your deposition and mark it Exhibit C.

Ans. 8. I have seen a portion of those bonds, as president of the Peoria, Pekin, and Jacksonville Railroad Company (but not on my own account). I had 40 of them in my possession, from No. 61 to 100 inclusive, for the principal sum of $500 each, with coupons attached thereto, due on the 1st day of March, 1870, and thereafter. They were delivered to me as president of the railroad company by Isaac L. Morrison, in behalf of Morgan County. Ten thousand dollars of the amount of

311 the principal of the bonds, being 20 bonds, numbered from 81 to 100 inclusive, was delivered to Isaac L. Morrison with coupons attached, and eleven bonds, No. 61 to 71, both inclusive, with interest coupons thereon, were delivered to Sam'l M. Martin, clerk of the county court of Morgan County, on the 11th day of December, 1875, under a decree of Judge Higbee, affirmed by the Supreme Court, directing such return to Morgan County; said receipt of Martin for said bonds, and a copy of said decree, I herewith make a part of my deposition, marking the receipt Exhibit C, and the decree Exhibit D: said interest coupons being due on the 1st day of March, 1870, and thereafter.

Int. 9. Did you ever present any of the coupons on the Morgan County bonds for payment; if so, when and where, and were they paid; if not what was done them?

Ans. 9. I presented at their maturity 20 coupons for the sum of $30 each, due on the 1st day of March, 1870 (these coupons having been detached from bonds No. 61 to 80 inclusive), for payment at the American Exchange Bank, in the city of New York, where they were made payable, and the payment was refused. This bank told me they would

312 probably be paid in Jacksonville, Illinois, and that they would send them out to their correspondent, Mr. P. Ayers & Co., bankers in Jacksonville, for collection. This bank told me they had sent them out, and that M. P. Ayers & Co. had returned them to them un-

paid. I also presented at their maturity at the same bank, interest coupons for 1871 and 1872, or rather I inquired at the American Exchange Ba k if they would be paid, and was informed that no funds had been provided for that purpose. I presented at their maturity coupons (detached from the same bonds) due in March 1st, 1873, and was informed that no funds had been provided for the payment. The same coupons were thereafter, on the same day, presented by S. W. Nevals, a notary, for payment, which was refused, and they was protested by him on the same day, March 1st, 1873, for non payment.

Int. 9. When did the Illinois River Railroad Company cease to operate or have control of its road, if you know?

Ans. 9. I cannot state of my own knowledge. I can only state that when the purchase was made by Aaron Arnold, Trowbridge, and myself, at the foreclosure sale of the property embraced in the trust-
313 deed or named in the deed, which was on Oct. 1st, 1863, the purchasers immediately took possession of the road, and after that time the Illinois River Road had nothing whatever to do with the purchased property at the time of the foreclosure sale and previously thereto, but how long I cannot state. The road was in possession of the trustees of the first-mortgage bondholders and was being operated by the trustees.

Cross-examined:

Int. 1. Of whom did you, or you in connection with your associates, buy the Illinois River mortgage bonds, and what did you pay for them?

(Question objected to as immaterial and improper.)

Ans. 1. I and my associates, Arnold and Trowbridge, bought the said Illinois River Railroad bonds from the Importers' and Traders' National Bank, Lucius Hopkins, the Chicago and Rock Island Railroad Company, George T. M. Davis, George T. Cobb, Alexander Studwell, and several other parties not now recollected, and paid a valuable consideration for the same in money, stock in bonds of the Peoria, Pe-
314 kin and Jacksonville Railroad Company, and other valuable consideration. I cannot recollect accurately what amount of money we paid for them.

Int. 2. State the amount in dollars and cents paid by you and your associates for the 1,320 bonds bought as stated by you; exactly or approximately.

(Question objected to as immaterial.)

Ans. 2. It is very difficult to state even approximately from memory the amount that was paid in dollars and cents, for after the business relating to the purchase of the bonds, and our relation to several of the parties was involved in litigation until March 2, 1868, which resulted in a settlement between the parties and execution of releases in full settlement. My impression is we paid about $200,000 approximately, but I cannot state more definitely. That is more than they were worth, as the result has proved.

Int. 3. Was the $20,000 in Morgan County bonds delivered to you by Mr. Morrison, in behalf of Morgan County, a donation from the county?

Ans. 3. I suppose that is a question of law, as to whether it was a donation from the county, but when the P. P. & J. Company were
315 making the preliminary arrangements for extending its road south from Virginia to Jacksonville, the county was encouraged

by Judge Whittock, county judge of Morgan County, to expect that the $50,000 suits ordered by Morgan County to the stock of the Illinois River Railroad Company, or so much thereof in amount of the bonds as could be made available, would be appropriated to the railroad company in aid of the construction of the road to Jacksonville; $20,000 of the principal of the bonds of the county were placed in the hands of Mr. Morrison to be delivered to railroad company on the completion of the road to Jacksonville. The road was completed to Jacksonville, and trains run into the city on or about July 4, 1869, and on or about July 28th, the $20 000 in bonds so placed in the hands of Mr. Morrison by the county were delivered to the railroad company. Whether it is to be regarded as a donation or an equitable or legal equivalent for bringing the road to Jacksonville, I am not prepared to decide.

Int. 4. If I understand you correctly, neither Alexander Studwell nor any person other than the complainants in this suit have any
316 interest in the 1,320 Illinois River Railroad mortgage bonds of which you have testified?

Ans. 4. I have no knowledge that Alexander Studwell or any other parties than the complainants have any interest in these bonds.

JOHN ALLEN.

By consent, adjourned to April 11, 1876, at 9 a. m., at the same place.
March 17, 1876.

HENRY STRYKER, JR.,
Special Commissioner.

Re-examination of Allen.

APRIL 11, 1876.

The parties appeared before me, at my office, and by consent the said John Allen was again examined as a witness on behalf of the complainants, and he testified as follows, after having been by me duly sworn according to law:

Int. 1. In your former testimony you spoke of having had some of the bonds issued by Morgan County to the Illinois Railroad Company in your possession as president of the P. P. & J. Railroad Company, and also of having restored a portion of them to the custody of the county. You may now state what has become of the balance of them, and if you have any receipt for them you may attach the
317 receipt to your answer and mark it Exhibit.

Ans. 1. On behalf of the P. P. & J. Railroad Company, I have to day, as its president, restored to the custody of Morgan County the balance of the said Morgan County bonds required to be so restored by the Railroad Company under and virtue of a decree of Judge C. L. Higbee made at the special term, 1873, of the circuit court of said Morgan County; the said balance of bonds being nine in number, for the sum of $500 each, dated on the 10th day of September, 1857, and numbered from 72 to 80, both inclusive, together with the interest coupons thereto belonging, maturing in March 1st, 1870, and thereafter. I now present the original receipt of Samuel M. Martin, county clerk of said Morgan County, acknowledging the receipt of said nine bonds and coupons. I mark Exhibit E, and attach it to my answer.

Cross-examined:

Int. 1. You stated that as president of the P. P. and J. Railroad Company you returned to the custody of Morgan County certain bonds paid by the county to the Illinois River Railroad Company; state

318 whether or not yourself, Edwin L. Trowbridge, and Aaron Arnold were the principal owners of the P. P. & J. Railroad at the time this suit was brought.

(Complainants object to the question, because it is not proper cross-examination, and also because it is immaterial.)

Ans. 1. Aaron Arnold, Edwin L. Trowbridge and myself were individually large owner of the stock of the P. P. & J. Railroad Company at the time of the commencement of this suit. I think we held at that time a majority of the stock in that corporation.

JOHN ALLEN.

Adjourned to 9 o'clock a. m., Wednesday, April 12, 1876.

HENRY STRYKER, JR.,
Special Commissioner.

Deposition of Wm. Thomas.

APRIL 12, 1876.

Pursuant to adjournment, I proceed with the examination of witnesses in this case.

HENRY STRYKER, JR.,
Special Com'r.

WILLIAM THOMAS was next produced, by me first duly sworn according to law, and he testified as follows:

319 Int. 1. State whether in 1862 you held any position in the Illinois River Railroad Company; if so, what position.

Ans. 1. I was one of the directors.

Int. 2. When did the directors of the Illinois River Railroad Company hold their last meeting?

Ans. 2. In July, 1862.

Int. 3. Why was no other meeting held after that time?

Ans. 3. At that meeting the road with i's appurtenance was surrendered to the trustees of the bondholders.

Int. 4. State if you ever had a claim against the Illinois River Railroad Company. If so, what was the amount of it, and if it has been settled, how has it been settled?

Ans. 4. I purchased from the contractors Allen & McGrady $4,000 of the bonds given by Morgan County to the Illinois River Railroad Company. The president of the company had given an order to Allen and McGrady for $4,000 of the bonds, and Allen & McGrady assigned that order to me. On presenting the order at the banking house of Elliott and Brown they re*ferred* to deliver the bonds, saying that the

320 county judge had directed them not to pay any bonds, except for work done in the county of Morgan. Subsequently I brought suit against the county, and recovered the amount payable on the bonds. By a decision of the supreme court in the case of Morgan County and others vs. Wm. Thomas and others (76 Ills. 120), the bonds were delivered to me by the clerk of the county court. I did not consider that I had any legal claim against the railroad company.

Int. 5. When did you present the order to Elliott & Brown?

Ans. 5. I believe the order was dated April 2, 1859, and they were endorsed to me in a few days thereafter, and a very few day' thereafter they was presented by me to Elliott and Brown.

Int. 6. Do you remember the case of Blair and others vs. Morgan County et al., in reference to these Morgan County bonds; and if so, were you ever consulted in any way in reference to the settlement of

this claim you have been speaking of in the final settlement of that case? If so, state what you did about it.

321 Ans. 6. I remember that there was a decree entered in such a suit in the Morgan circuit court. I was absent at the time the decree was rendered. On my return I learned what the decree was from Mr. Morrison, Mr. Dummer, and perhaps others, and I might say from reading the record. I had no consultation with any of the parties or any person about the payment of my claim by the county, before this decree was entered. My information from Mr. Morrison and Mr. Dummer was that by the arrangement or settlement I was to secure a dividend of the amount received of the county; then he, Mr. Dummer, stated further that if I referred to take a dividend he was entitled to the whole amount on his judgment. I refused to receive any dividend. Dummer wanted me to sue the railroad company, and I declined to do it. I was not a party to the Blair suit, and refused to be.

Int. 7. At the time of the settlement of the Blair case and prior thereto was the county aware of this claim of your' against the county? If so, how did it acquire the information?

322 Ans. 7. The county knew of my claim because I was a party to the suit of Richard S. Thomas et al. vs. The County of Morgan, decided Jan'y term, 1866. (39 Ills. Reports, 496.) In that case I had presented my claim, & I claimed to be entitled to the bond.

Cross-examined:

Int. 1. In your deposition you testify that "Mr. Dummer wanted me to sue the railroad company." Will you please answer more fully upon that matter, and especially upon this point? Was what Mr. D. said anything more than a suggestion that you ought to become a judgment creditor in order to be in a legal position to enforce your rights, on the ground that a creditor at large could not file a creditor's bill, and was not this suggestion made while the Blair suit was yet pending?

Ans. 1. The conversation or statement referred to was in one or more conversations had with Mr. D. on the subject of the claim of his clients, and mine too, against the railroad company, in which he stated that he was bringing suits for his clients with the view of being in position to file a bill against the county. He then suggested or advised that

323 I should bring a suit in order to proceed against the county for the bonds. I mean by the word "wanted" suggested or advised.

Int. 2. You speak in substance of Mr. D.'s notice to you that you might receive a dividend of the amounts received by the complainants in the Blair suit. Is it not true that Mr. D. advanced you that $12,000 in money, and bonds had been received from the county of Morgan by the complainants in the Blair suit, and that by stipulation you might take a pro rata share, if you consented to do so, by surrendering your claim of an order for $4,000 of the bonds to the county of Morgan; but if you declined, the $12,000 was to be distributed pro rata among the complainants in the Blair suit; and was or was not your attention particularly called to this, and did you not finally give Mr. D. a formal written notice that you declined the offer?

Ans. 2. The conversation with Mr. D. that I have referred to occurred before the decree in the Blair case. After the decree, Mr. D. informed

324 me that by agreement with the county he was to receive $6,000 in money and $6,000 in county bonds; that I was entitled to a dividend out of that amount by surrendering my claim against the county, but if I refused to receive the dividend and surrender the claim, then his client' were entitled to the whole sum agreed to be paid. I subsequently gave Mr. D. a written notice refusing to receive any dividend.

Int. 3. In your purchase of the orders for the Morgan County bonds ($4,000 in amount) of Allen and McGready, at what price did you estimate the bonds?

Ans. 3. I paid $2,000 for the bonds.

Int. 4. Was you in the board of directors of the Illinois River Railroad Company at the time the Morgan County bonds were issued to the Illinois Railroad Company?

Ans. 4. I think I was not, but cannot state certainly about that.

Re examined:

Int. 1. What was the consideration paid by Allen and McGrady for the order, if you know?

Ans. 1. I have no personal knowledge on that subject, but I understood that the consideration was their release of the Illinois Railroad
325 Company from a contract to furnish ties.

(Answer objected to as hearsay.)

Int. 2. Have you those orders now? If so, produce them.

Ans. 2. I have not. I believe they were filed in the circuit court at the time of the trial reported in 76 Ills., page 120.

Int. 3. State, if you know, over what portion of the road the contract to furnish ties extended.

Ans. 3 I don't know.

Int. 4. Were you a director at the time the contract was made?

Ans. 4. I think not.

Int. 5. Was it in writing, and do you know where it is?

Ans. 5. I suppose it was in writing, but don't know where it is.

Int. 6. Where are the book' and papers of the Illinois Railroad Company, and in whose possession were the' left?

Ans. 6. The directors left them in possession of Mr. Schrivly, the secretary, who informed me that he delivered them to R. S. Thomas. I have understood that they were burned in the Chicago fire.

WILLIAM THOMAS.

326 DEFENDANTS' PROOFS.

The complainants producing no other witnesses, the solicitor for Morgan County then introduced the following witnesses, who, having been by me duly sworn according , testified as follows:

Deposition of R. Hockenhull.

ROBERT HOCKENHULL, of lawful age, having been by me first duly sworn according to law, testified as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. 1. Robert Hockenhull; 59 years old; reside in Jacksonville, Illinois, and am a banker.

Int. 2. State whether or not you know of the cash value of bonds issued by the county of Morgan to the Illinois River Railroad Company, or the Tonica and Petersburg Railroad Company, and if you answer in yea, state the time you made purchase of any such bonds, and what you paid for the same.

Ans. 1. I exchanged a piece of property for $7,500 worth of the bonds of Morgan County, issued to the Tonica and Petersburg Railroad Company, which I sold on the 16th of February, 1859, for $4,875 cash, which was 65 cents on the dollar.

327 Int. 2. Did you or not consider that the amount you received

for said bonds was the highest price that the bonds could be sold for at that time?

(Question objected to as leading in form, and because it is not the criterian of value of the bonds.)

Ans. 2. I did.

Int. 3. State the time these bonds had to run, and the rate of interest.

Ans. 3. The interest was 6 per cent. I don't remember how long the bonds had to run. They were 20-year bonds, I think.

Int. 4. Were all the coupons remaining on the bonds when you sold them?

Ans. 4. There was a coupon nearly matured which I was about to cut off, but did not.

Cross-examined:

Int. 1. None of the coupons had matured when you sold them, had they?

Ans. 1. None that were on the bonds had.

Int. 2. All you know about the value of the bonds is the fact that you bought and sold the bonds you referred to?

Ans. 2. That is all.

Int. 3. Do you know anything about the value of the Morgan County bonds issued to the Illinois River Railroad Company about that
328 time?

Ans. 3. I do not.

Re-examined:

Int. 1. Would or would not the bonds issued by the county to the Illinois Railroad Company if issued for the same length of time and bearing the same rate of interest be worth as much as the bonds you have spoken of?

Ans. 1. Issued under the same circumstances I would suppose they would.

ROBT. HOCKENHULL.

Deposition of F. G. Farrell.

FELIX G. FARRELL, being by me first duly sworn according to law, testified as follows:

Int. 1. State your name, age, residence, and occupation.

Ans. 1. Felix G. Farrell; 46 years old; reside in Jacksonville, Illinois; and am a banker.

Int. 2. State if you know the cash value of the bonds issued by the county of Morgan to the Illinois River Railroad Company, or the Tonica and Petersburg Railroad Company, say, about the year 1860.

Ans. 2. I think it was in the fall of '57, or spring of 1858, that I bought $1,000 worth of the bonds issued by the county of Morgan
329 to the Tonica and Petersburg Railroad Company, of W. W. Bennet for $666.66 payable in goods; my impression is I sold the bonds within 6 mos. after I got them for $600, at 60 cts. on the dollar.

Int. 3. Did you or not consider that to be the market or cash value for said bonds at that time?

(Question objected to as not the proper measure of value, and being leading in form.)

Ans. 3. I did; it was as much as I could get for it.

Int. 4. Would, in your opinion, bonds issued by the county of Morgan to the Illinois River Railroad Company, having same rate of interest and issued at the same time, be worth the same as the bonds you sold?

Ans. 4. Yes; they were considered about the same thing.

Cross examined:

Int. 1. How long had the bonds been issued before your purchase?

Ans. 1. As soon as the bonds came into the hands of Bennet from the county, I got them; I had contracted for them before Bennet got them.

FELIX G. FARRELL.

330 *Deposition of Berdan.*

JAMES BERDAN, of lawful age, was produced, and having been by me first duly sworn according to law, testified as follows:

Int. 1. State whether you were the county judge of Morgan County, Illinois, at the time the Morgan County bonds were issued to the Ill's Railroad Company, and state also, whether or not any conditions were imposed as to the delivery of said bonds to said company, and, if so, what conditions.

(The above question as far as it relates to any condition of delivery of bonds, objected to by complainants because immaterial and incompetent.)

Ans. 1. I was county judge of Morgan County at the time referred; It was understood and agreed by the county judges and R. S. Thomas, representing said company, that said bonds were only to be issued, paid out and used for work actually done on said road in Morgan County.

Int. 2. With whom were said bonds deposited; did you attend to the deposit personally, and was the condition that bonds were not to be used or paid out except for work actualy done on said road in Morgan County, communicated to the despositaries?

331 (Question objected to as immaterial and incompetent.)

Ans. 2. They were deposited with Brown & Elliott, bankers; I think, probably, I attended personally to the deposit; I think we all went; said condition was communicated to the depositaries.

Int. 3. Were any of the said bonds or coupons paid out to the Illinois River Railroad Company; and, if so, on what account?

Ans. 3. I think the 1st coupon or two were paid out to them for surveying the lines in the county, and mostly in the vicinity; I think we paid them first in money or county orders, which were cashed, and then afterwards adjusted it by taking their coupons from bonds that were delivered to them; I am not sure whether this was done by our court or by our successors.

Int. 4. Do you or not personally know that the Illinois Railroad Company did make surveys of their proposed line of road in Morgan County, and were there or not several lines surveyed?

Ans. 4. I do know that fact, for some of the lines were in our immediate vicinity.

Int. 5. At what time did your term of office expire?

Ans. 5. About Dec. 1st, 1857; the first Monday in December, 1857.

332 Int. 6. Was the agr*angement* made by R. S. Thomas, acting for the railroad company, and Morgan County actualy in writing or verbal, and was any entry of the same made on the county records; and, if not, do you recollect why?

Ans. 6. I think it was a verbal agreement or understanding, it was to be placed on the records; we communicated the whole thing to our successors, but whether we left it to be done by them, or whether it

was an in advertance of the clerk I cannot say; I think we left it for our successors and R. S. Thomas and Elliott & Brown to arrange.

Cross-examined:

Int. 1. When you deposited the bonds with Elliott & Brown, did you make it a specific direction or order that the bonds should not be delivered by the custodians only for work done in the county; if so, was the direction or orders in writing; who were present at the time; how were the custodians to know when, to whom, and what amounts to pay out the bonds, and upon what evidence that the work was done in the county were they to pay them out?

Ans. 1. I don't know that we made any specific directions or orders in writing or otherwise, but the bonds were filled up in Elliott &
333 Brown's office, and they knew all about it; the work of filling up the bonds was done under their eye, and they knew all about it that the bonds were not be delivered up only for work done on the road in this county. The filling up the bonds took a long time; there were bonds for three roads, and the work of filling up the bonds was done in their presence, and there was constant conversation about these bonds; I don't remember who was present, as the filling up occupied a good many days. Judge Brown, according to my recollection, was the council for R. S. Thomas, the president of the road; I suppose the custodians would know from the county judge when, to whom, and in what amounts to pay out the bonds; there was nothing expressly stipulated about it, but I suppose we talked about it and all other matters connected with the bonds.

Int. 2. To whom was the railroad company to deliver the certificates of stock due to the county for these bonds, at what time, and for what purpose, if you know?

Ans. 2. I think the certificates was delivered to the treasurer of the county, W. G. Johnson, on the making the subscription by the
334 county; I think there was but one certificate, and that it is in the county clerk's office now, or should be there. It was made at the time of the subscription, and before the issuing of the bonds.

Int. 3. Is your recollection as to the time the certificate was deposited with the treasurer very definite and clear?

Ans. 3. I have no distinct recollection of the date further than it preceded the issuing of the bonds.

Int. 4. Did you see the certificate of stock?

Ans. 4. I think I saw it; I think it is probable Johnson came to me immediately about it.

Int. 5. To whom was the certificate originally delivered by the company?

Ans. 5. To Johnson or the clerk; it might have been delivered in my presence. It ought to be there, as there were certificates for stock in three roads, and they were valuable, and we would see that they would not be left in a pigeon hole.

Int. 6. The coupon that was paid for surveying, &c., that you spoke of, was designated as No. 1, was it not? Do you know what amount of surveying and work was done in the county at the time you speak of?

Ans. 6. I don't know that any coupon was paid by us; we paid
335 in money, and then the amount was adjusted on the delivery of coupons by our successors. I do not know what amount of work was done in the county at the time I speak of.

Int. 7. How many lines were surveyed by the company?

Ans. 7. I think they made 2, 3 or 4 right here; how many they made elsewhere I cannot say.

Int. 8. Were any of the coupons on these bonds paid to any one else but the railroad company?

Ans. 8. Not that I ever heard of.

Int. 9. What was the name of Brown, of Elliott and Brown, and is he living or dead; and if dead, how long has he been dead?

Ans. 9. William Brown; he died some 3 or 4 years ago.

Re-examined:

Int. 1. Can you state whether or not Mr. Richard S. Thomas was the president of the Illinois Railroad Company in 1857, and before and after; and was there or not any recognition by Mr. Thomas after the deposit of said bonds with Elliott & Brown of the arrangement spoken of by you that the bonds were not to be paid out except for work in Morgan county, and if so, up to what time; and was such arrangement ever questioned by him?

336 (Question objected to as far as it relates to the delivery of the bonds, because immaterial and incompetent, and also because not a proper redirect examination.)

Ans. 1. He was president at and before and after 1857. Thomas was informed of this arrangement by myself, and I suppose by them too. During my term of office he made no objection to it, and, as I understood it, assented to it. At any rate he made no complaint to us. After my term of office ceased I do not know what conversations he had with Judge Cassell.

JAMES BERDAN.

Deposition of William Thomas.

WILLIAM THOMAS being next produced, by me first duly sworn, testified as follows:

Int. 1. Will you please state whether or not you were a director of the Illinois Railroad Company in the year 1862; and if so, have you any knowledge whether or not, about that time, the account of Richard S. Thomas, president of the Illinois Railroad Company, for salary and advances was audited and allowed; and, if so, what sum, as nearly as you can state, was found due and allowed in favor of said R. S. Thomas against the said Illinois Railroad Company?

337 Ans. 1. I was a director about that time. I was a director in Jan'y, 1862, and attended a meeting of the board at Springfield, and at that meeting R. S. Thomas presented his account against the company for his services as president and superintendent of the road, and for money laid out and expended for the use of the road, amounting to upwards of $16,000, as near as I recollect. A committee of the board, of which I was a member, examined the account and the vouchers accompanying them, and the account was then allowed and ordered to be paid with interest at, I think, 10 per cent. out of any means or funds that he could obtain.

(Complainants object to so much of the above answer as gives the contents of any records or matters that are in writing or that appears on the books of the company.)

It is hereby stipulated that the books of the board of directors of the Illinois Railroad Company was burned in the great Chicago fire.—H. STRYKER, Jr., *Special Commissioner.*

Int. 2. How long have you been a resident of Morgan County, and have you during that time been well acquainted with the value
338 of Morgan County bonds, and especially of bonds issued to the Illinois Railroad Company; and, if so, what was the value of the said Morgan County bonds issued to the Illinois Railroad Company in 1867 & 1868?

Ans. 2. I have been a resident of this county since Oct. 12th, 1826. I have not had any dealing with Morgan County bonds only in one instance. I had information from Cassell, judge of the county court, that he bought some Tonica and Petersburg bonds at 60 cts. on the dollar. I know of no sale of the Illinois Railroad bonds except the $4,000 in bonds I purchased. I purchased them at 50 cts. on the dollar. After that decision in 39th Ills., page 496, I don't suppose they would have sold for what I gave for them; in fact I don't suppose they could have been sold for anything like that sum. I understood that in paying off a decree in favor of some creditors of the railroad company against the county the bonds were estimated at 40 cts. on the dollar.

(So much of the above answer as gives the statement of Cassell and the suppositions of the witness objected to by complainants.)

Cross-examined:

Int. 1. At the time of the allowance of R. S. Thomas' claim,
339 was it not understood at that time that the railroad company had reached a final crisis in its career, and was it not understood that the stockholders in the corporation would probably not be affected in allowing the claim at either a greater or less sum, and also that it was doubtful whether R. S. Thomas could realize anything on his claim if it were allowed?

Ans. 1. It was not so understood by the directors that the company at that time had reached a final crisis in its career. It was understood by the directors that the stockholders would not be called on for any larger amount paid or payable than they were already liable for. I think the directors had no doubt about the ultimate payment to R. S. Thomas; the time of payment was doubtful.

Int. 2. At that time did not the board have reasonable apprehensions that the road would have to be surrendered under the trust deed then on it?

Ans. 2. I apprehended that that would be the result, but Thomas and Prettyman expressed opinions that they thought they would be able to raise money and finish the road to Jacksonville.

Int. 3. Did the company have any contract with Thomas before that time as to the amount of salary he should receive.

340 Ans. 3. I think they had in regard to his salary as president and superintendent of the road, but I do not recollect the amount.

Int. 4. About all you know in reference to the value of the bonds executed to the Illinois Railroad Company is the fact that you bought some bonds, as testified to by you in your deposition heretofore taken?

Ans. 4. I have stated all I know on that subject.

Int. 5. You have stated more than you really knew, of your own personal knowledge, in reference to the value of the bonds, by stating what other people have told you and your suppositions, have you not?

Ans. 5. I have stated what I knew and what I heard from others.

Int. 6. In what way and to what extent did R. S. Thomas advance money for the company?

Ans. 6. He presented vouchers for all the money he laid out for the company, and they appeared to be all right.

Int. 7. What part of the road did he expend this money on?

Ans. 7. He was superintendant from Pekin to Jacksonville; I can't tell what part of the road he expended it on; I suppose it was for all the way through.

Int. 8. Did the board, at the time of allowing his claim, have any idea or expectation of any fund out of which he could obtain the pay-
341 ment of his claim? If so, what fund?

Ans. 8. The members of the board knew of the Morgan County bonds which probably might be made available, and it was understood that several stockholders were still in debt to the road in their subscriptions.

WM. THOMAS.

Deposition of H. E. Dummer.

HENRY E. DUMMER, having been duly sworn, deposed:

Previous to the special November term, 1867, of the Morgan County circuit court, I was informed that the trustees in the mortgage given by the Illinois River Railroad Company to secure the bondholders had instituted a suit in the United States circuit court for the southern district of Illinois, by a creditors' bill, to subject the Morgan County bonds issued to the Illinois River Railroad Company to the payment of something exceeding one million of dollars, balance due on the bonds issued by the said company after applying the proceeds of the sale of the Illinois River Railroad, which had been previously ordered to be sold under a foreclosure of the company's mortgage. The Blair suit had been instituted before the suit in the U. S. court. Upon receiving this
342 information, after advising with my clients, the complainants in the Blair suit, or attorneys representing them, I proposed to surrender the claims of the complainants for a sum less than the amount due them, the difference to be for the benefit of Morgan County.

The proposition was entertained by the county judge and the solicitor of Morgan County, but they stood out for the best term. As a sort of ultimatum I made a memorandum in writing during the special November term, 1867, the original of which was in evidence in the case of Morgan County vs. The P. P. & J. Road Company, but which I have not seen since, proposing, in substance, that the case of Blair & Co. should be submitted at the special November term, 1867, and the material allegations of complainants' bill admitted; that a decree should be rendered at that term that the bonds paid out under such decree might be redeemed by the payment of $12,000, one-half in the bonds in controversy and one-half in money, and that Mr. Wm. Thomas, who had a claim for $4,000, by an order of the Illinois Railroad Company, and who was not a party to the Blair suit, should share pro rata with the complainants in the Blair suit in the distribution of the $12,000. This memorandum proposition was finally *excepted*, with *their*
343 *modifications* that if Thomas declined to surrender his claim to the county of Morgan, the $12,000 in bonds and money were to be paid to the complainants and the complainants were to pay the costs.

This arrangement was not finally accepted until near the end of the November special term, 1867; on the last day of the said special term, 1867, the Blair suit was disposed of as the same appears of record. The character of the case and the facts admitted, and the decree consented to, were stated to the court, Judge Hodgees, and the decree was rendered as appears of record; so far as I remember, there was nothing in the manner of disposing of the case differing from that adopted in

all cases coming under my observation w'ere the facts are agreed on and a decree is to be rendered as in case of a formal trial. Shortly after the rendition of the decree, and, as I but recollect, within two or three days, Mr. Morrison, the solicitor for Morgan County, handed me six thousand dollars of the bonds in controversy; and some weeks after the rendition of the decree I obtained a Morgan County order for 6,000, which was cashed on presentation. The $6,000 in bonds and the $6,000 in money was all I ever received from Morgan County under said decree, or on account of the claims of complainants in the Blair suit. Immediately on
344 the rendition of said decree, I called the attention of Mr. William Thomas to the offer made to him to share pro rata in the $12,000 of bonds and money. I repeatedly cal'ed his attention to it, and urged a decision. After, as I but recollect, some six or eight weeks after the rendition of the decree in the Blair suit, he gave me a formal written notice that he would not accept the offer to share pro rata in the $12,000 of bonds and money upon the terms of surrendering his claim to Morgan County. I have examined my paper' diligantly to find this original notice, but have not been able to find it. I remember it was exhibited by me at the trial of the case of Morgan County vs. The P. P. & J. Road Company et al., but I cannot find it on an examination of the files in that case. Upon receiving the notice from Mr. William Thomas I accounted to the complainants in the Blair suit for the $12,000 of bond' and money. By accounting, I mean I paid my said clients their pro rata shares of said $12,000 with their qua'ifications. The share payable to Henry McKee for the use of himself and others, my impression now is, is not fully paid. I made enquiries for McKee some months since, but have not yet learned his residence. The complainants' bill charges, as I
345 understand it, that I received from the county of Morgan more than $6,000 on bonds; this is not correct. No detached coupons were given me. The bonds given me had on them the coupons for '67, but that was understood at the time, and was not the result of mistake or design to pay me anything personally. The coupon for '67 I accounted for to my clients as part of the 6,000 of bonds.

Cross-examined:

Int. 1. Have you examined the exhibit filed with H. G. Whittock's depositions in this case? and if you have not, please examine the same, and say whether or not that exhibit is a true copy of the paper you have referred to in your direct examination.

Ans. 1. I can't say whether it is a correct copy or not, but I have no reason to doubt it being a true copy.

Int. 2. Who wrote the original?

Ans. 2. I did.

Int. 3. To whom was it delivered by you, if to any one?

Ans. 3. To either Judge Whittock or Mr. Morrison; I can't say to which of them.

Int. 4. What reason was there, if any, if you remember, why
346 the contract by which that Blair suit was settled was left partly in writing and part'y in parol?

Ans. 4. The only point about which there was a difference, or rather the chief point of difference, was the amount to be paid them. The arrangement after that memorandum was made was modified by parol, and then the stipulation and understanding, that the case should be disposed of at the special term, 1867, as an agreed case, although it existed when this memorandum was made, was not put in writing at any time.

Int. 5. Was there any change of the contract after the writing was delivered, or is it or not true that the original paper was delivered at the time you received $6,000 in bonds?

Ans. 5. The paper was not delivered at the time Mr. Morrison handed me the bonds, but it was delivered to Mr. M. or Judge Whittock some days before the suit was disposed. The papers was modified in two respects after I handed it over: first, in regard to the payment of costs, and, secondly, in case Judge Thomas should decline the offer made to him. There was a formal receipt for the whole number of bonds there on hand in the possession of the county given by me for the complainants, which, I think, is among the papers on file in the case
347 of Morgan County vs. P. P. & J. Railroad Company et al. What day it was given I don't remember, but it was dated the day the case was disposed of, Nov. 30, 1867.

Int. 6. With whom was the modified agreement you have spoken of made? Who acted on the part of the county?

Ans. 6. At this distance of time I cannot say whether with Mr. Morrison or Judge Whittock. It was certainly made with one of them. Most of the negotiations I had was with Mr. Morrison, though I distinctly recollect Judge Whittock being present and talking with me about it, either with Mr. Morrison or alone, or very likely both.

Int. 7. Were you or not one of the solicitors of Morgan County in the case when the county of Morgan was complainant and the P. P. & J. Railroad Company and I. L. Morrison were the defendants?

Ans. 7. I was one of the solicitors of Morgan County in that suit.

Int. 8. Was or not the Whittock you have spoken of a witness in that case?

Ans. 8. My recollection is he was.

Int. 9. Was he not cross-examined by the solicitor of Morgan County? If so, by what one?

Ans. 9. I think I did. That is my best recollection.

Int. 10. Did you or not in that cross-examination propound this
348 interrogatory in regard to this disposition of what is called the Blair case in the words following: "Was the arrangement or agreement made in regard to the disposition of the case of Blair and others vs. Morgan County and others in writing; and, if so, have you the original, or do you know where it is?" and was not the exhibit you have referred to in the former part of your deposition introduced into the record in that way?

Ans. 10. Trusting to my memory alone, I could not remember the exact details. My best recollection is, that whatever questions were put in cross-examination to Judge Whitlock were put by me. In looking at the deposition of Judge Whitlock, which I believe is in the handwriting of Judge Epler, I find that the interrogatory copied into the question now propounded to me was put by the party cross-examining Judge Whitlock, and that the answer to that indicates that he exhibited the original paper and filed a copy, and I find attached to the deposition the paper marked Exhibit A, which is a copy (I have no reason to doubt) of an original, though I cannot from memory say.

Int. 11. Had there been any depositions taken or proofs in the case of Blair et al. vs. Morgan County et al. prior to the entering of the
349 decree in November 30, 1867, and were there any witnesses introduced or evidence taken on the hearing of the cause?

Ans. 11. As I have endeavored to state in a general way in my examination in chief, there was no evidence offered by this court, but the facts agreed upon were stated by either Mr. Morrison or myself, or both. I

examined a few days since a part of the file in that case, and I saw, as marked filed in Nov. 30, 1867, statements of the judgments recovered vs. the Illinois Railroad Company, by the complainants, certified by the clerks of Mason and Tazewell Counties, not being a transcript of the records, but an abstract of amounts, dates, &c., but these were not offered as evidences; the material facts were stated by either Mr. Morrison or myself, or both of us, and a decree which had been prepared, as consented to by both of us, was handed to the court for his approval, and he, as a matter of cou'se, approved it.

Int. 12. Is it or not true that the agreement between the parties as to the amount to be paid in satisfaction of those claims was made outside of court and before any order was taken in the case?

350 Ans. 12. If I give the statement more in details than I have, I would state that some days before the final disposition of the case I handed that memorandum either to Judge Whitlock or Mr. Morrison, and it was not then accepted—the chief matter of difference being the amount that should be paid on redemption—up to the evening before the case was disposed of; it was not agreed on the part of Morgan County that they would do anything in the premises. I have a distinct recollection that this matter of what should be done in case Thomas should decline sharing in the proceeds on the basis of giving up his claim, was the last portion of the understanding agreed upon. I think not until the morning of the day we disposed of the case were the orders and the others papers for carrying out the agreement prepared. As to this arrangement as to what should be done if Thomas should not agree, my recollection is refreshed by remembering that I immediately communicated with my clients and then saw Judge Thomas. As to the costs matter, my recollection is confirmed by Judge Whitlock' statement in his deposition that the costs were to be paid by the complainants.

351 Int. 13. Is it or not true that the answer of Morgan County was filed in that case in Nov. 27, 1867, and a decree taken on the 30th of the same month? If you know of any reason for the expeditious disposition of this case, state what it was.

Ans. 13. The notion that I had, representing the complainants in the Blair suit, was this: that I supposed the trustees, who had the suit in the U. S. court, might and would abandon their suit in the U. S. court and seek to become parties to the creditors' bill of Blair and others, in which case the distribution to my clients would in my judgment be smaller than what they got. As I then understood the law, the Blair suit having been first instituted had jurisdiction of the controversy, and had jurisdiction to dispose of the Illinois Railroad bond. The avowed purpose of the parties representing the county of Morgan, as far as I know them, was to avail themselves of their right to satisfy their liability in these bonds at as low a figure as they could, and I knew of nor suspected any other notion on the part of anybody than to avail themselves of their rights.

Int. 14. Were any of the bonds disposed of by the Blair decree,
352 except the $6,000, ever under the control of the complainants in the Blair suit or their solicitor? Is it not true that the county delivered the $6,000 in bonds with the coupons attached and the $6,000 in cash, and took possession of the balance of the bonds and coupons at that time?

Ans. 14. I believe I have already stated that I never received on account of the complainants in the Blair suit anything except $6,000 in bonds and $6,000 in a county order. I have no idea that any person

other than myself received anything on account of the complainants. It would have been almost impossible for them, or any one else, to have got them without my knowledge. I never saw the remainder of the bonds, and as they were to be redeemed, according to the agreement, for the $12,000 paid, I would have regarded it a useless formality to have received the bonds and then handed them back.

Int. 15. You have spoken of your motive in the disposition of the Blair case; is it or not true that your motives were communicated to those representing Morgan County, and did you not understand that Morgan County was under a rule to answer in the case before
353 mentioned in the U. S. circuit court, and the case of Blair was hurried through that the record might be used in their answer in that case?

Ans. 15. As to communicating my motives in a formal way in express language I have no recollection, as my motive was so very obvious that it would seem ridiculous to have stated it. As to the other branch of the question, I knew the suit was pending, and I think I distinctly recollect that Mr. Morrison and I, in talking it over, were of the opinion that the Morgan circuit court had the right to dispose of the bonds, and a decree in said suit would have been a defence in the other suit. I think I knew Morgan County had been served with process, and would have to answer, though I don't remember that any specific time was set for the county to answer, yet I knew that it must be filed at that time.

HENRY E. DUMMER.

Deposition of W. S. Hook.

WILLIAM S. HOOK, having first been duly sworn by me, testified as follows:

Int. 1. State your residence and occupation since 1866, and state, as far as you know, what was the value of the 6 per cent. Morgan
354 County bonds issued to the Illinois Railroad Company in 1866–'67, and 1868; and state whether you knew of any actual sale of such bonds in the year referred to.

Ans. 1. Resided . I bought Jan'ry 28th, 1870, of H. E. Dummer one Morgan County bond, issued to the Ill' River Railroad Company, at the rate of sixty five cents on the dollar.

Int. 2. State whether, since 1866, you have been acquainted with the ordinary rate of interest in Morgan County on loans, secured by first-class security, and if so, what rate, and whether payable annually or semi-annually?

Ans. 2. The ordinary rate of interest is ten per cent.

Cross-examined:

Int. 1. Have you or not been in business in the county of Morgan, and if so, for how long, and in what business? Have you or not had opportunities, during that time, to know the current value of Morgan County 6% bonds? Were or not Morgan County 6 per cent. bonds, which were recognized by the county as valid obligations, considered by
355 dealers in such securities as first-class securities; were or not such bonds worth the sum equal to a ten per cent. investment interest annually?

Ans. 1. I have been in the banking business in Jacksonville since 1857. The credit of the county has been good since that time. I only know of one sale of such bonds. I should consider that during that time a Morgan County 6 per cent. bond of unquestionable validity would sell for a

price that would make the sum invested in it equal to a ten per cent. investment.

Re-examined:

Int. 1. If sales were effected here in Morgan County of bonds maturing in 1877 in limited amounts, say in 1866 and 1867, would not the length of time before the principal matured render the bonds unsalable and thereby depreciate their value as compared with loans at 2, 3 and 5 years?

Ans. 1. It would have the effect to depreciate their values—the length of time they had to run would reduce their values.

WM. S. HOOK.

Deposition of Edward Scott.

EDWARD SCOTT was next produced, and sworn and examined, and he testified as follows:

Int. 1. State whether you have been county judge of Morgan
356 County, and if so, in what years; and state whether you know any fact or facts conducing to show what was the money value of 6 per cent. of Morgan County bonds issued to the Illinois Railroad Company at the time you were county judge?

Ans. 1. I was county judge from 1869 to 1873. During that time the county was ready to buy up such bonds if she could get them to cost less than ten per cent., but the county was not willing to pay more than that. I mean by this to say that money was worth ten per cent. and unless we could buy the bonds so as to make a profit to the county we would not invest. I recollect a proposition came from some one in Quincy to sell five or ten bonds, but the sum they were offered at I don't remember. I know that I made a computation and found that the county would make nothing, in my judgment, in buying them at the rate they were offered.

EDWARD SCOTT.

Deposition of I. L. Morrison.

The defendants offering no other witnesses at present, the complainants recalled and examined I. L. Morrison.

357 ISAAC L. MORRISON, recalled by complainants, testified as follows, after having been by me first duly sworn according to law.

(Defendants object to examination of witness, as he was the solicitor of the county.)

Int. 1. State if you heard the testimony of Mr. H. E. Dummer in this case; what you know, if anything, about the modification or change in the contract of settlement in the Blair case, and your opportunities of knowing of such alleged modifications, if any?

Ans. 1. I was present when Judge Dummer's deposition was taken. I was present when the written terms of settlement were drawn. The original paper was written by Judge Dummer. After it was drawn I went myself to M. P. Ayers & Co. and procured the bonds referred to. The money that was to be paid was an arrangement that County Judge Whitlock made, and what might have taken place as to modifications with the parties afterwards I knew nothing about. The terms, so far as I knew of them, are embraced in that written paper. The closing up of the matter and the payment of the cash were not done in my presence, and I cannot, of course, state what was done there.

Cross-examination:

Int. 1. In recalling the transaction, have you any recollection now whether at that time you knew how the costs of the Blair suit were to be paid?

358

Ans. 1. I have no distinct recollection as to whether anything was said about the payment of cost in any interview between Judge Dummer and myself. My recollection is that the proposition first made was for $6,000 in money and $6,000 in bonds. All the claims that were eventually embraced in the Blair suit were to be released, and the whole thing satisfied. The costs were small, no depositions having been taken, and I can't say that I said anything about them or that Judge Dummer said anything to me about the costs.

Int. 2. Have you any recollection, at this distance of time from the transaction, of advising Judge Thomas to take his pro-rata share of the $12,000 in money and bonds, and, if so, whether or not you did not substantially state to Judge Thomas that if he did not take it what would become of the $12,000, stating it substantially as Mr. Dummer has stated it in his deposition?

Ans. 2. Judge Thomas was not at home when the transaction occurred. After he came home I met him, I don't remember how long afterwards, and informed him that the suit had been settled. I think I stated

359

to him the amount of money bonds that had been paid over to to Mr. Dummer in satisfaction of these claims, and also informed him that he was to receive his pro rata proportion of his claims. I also told him that I had urged it, and had endeavored to get Dummer to pay him 50 cts. on the dollar on his original amount. I think I told him that was what I understood he paid for his claim, and I think I urged him to accept the proposition, as there was a decree of the Supreme Court against him, and I think I advised him to take what he could get. He told me that he had not decided upon it, but afterwards told me that he had declined it.

Int. 3. In recalling the circumstances of the transaction, have you any recollection of what you thought would become of his pro-rata if he refused it?

Ans. 3. I have no recollection now of having thoughts of that aspect of the case at that time. I had two objects in view—one was to get rid of any further litigation with Judge Thomas; the other was that he should get back what, as near as may be, he had originally paid for his claims, and I supposed he would be glad to settle that way, and I don't

360

know that I ever thought of the other aspect as presented in the question. What I was doing for Thomas was merely voluntarily on my part.

ISAAC L. MORRISON.

U. S. circuit court, southern district of Illinois. In chancery.

UNITED STATES OF AMERICA,
Southern District of Illinois:

JOHN ALLEN ET AL.
vs.
THE COUNTY OF MORGAN ET AL.

On this 4th day of September, 1876, the parties appeared before me, Henry Stryker, jr., commissioner, by consent, to conclude the taking of

testimony in this case, Messrs. Campbell and Morrison appearing as the solicitor' for complainants, and Messrs. Dummer & Springer appearing as solicitors for The County of Morgan.

The solicitors for Morgan County produced before and filed with me the following transcripts of records of judgments against the Illinois River Railroad Company, in favor of the following plaintiffs, and marked by me as exhibits, respectively, as follows:

A. & J. Haines	Exhibit	F.
George W. Dye	"	G.
Henry T. Thomas, adm'r	"	H.
Henry Swift	"	I.
Stephen Roney	"	K.
H. O. Neal et al	"	L.
361 Benjamin Beavly	Exhibit	M.
Layfayette Schaffer	"	N.
Reuben Bergstresser	"	O.
H. McKee & Co	"	P.
James Blair	"	Q.
Francis Low	"	R.
Aaron D. Addis	"	S.
Also the depositions of Benjamin S. Prettyman, Reuben Bergstresser	Exhibit	T.
Also the depositions of Benjamin Beesely and Isaac Vail	Exhibit	U.
Also the deposition of Francis Low	"	V.
Also the deposition of Mahlon Schooly	"	W.
The answer of Studwell, Hopkins & Cobb	"	X.
Transcript of proceedings of Morgan County court	"	Y.
Stipulation (or copy of stipulation) of trustees	"	Z.
Transcript of proceedings of directors of Ill's R. R. Co.	"	A A.
Second transcript of proceedings of Morgan Co. court	"	B B.
Contract of A. Studwell	"	C C.

Answer of Morgan County in suit of Studwell, Hopkins & Cobb vs. Morgan County et al., in file in U. S. circuit court.

Deposition of Ralph Reynolds.

The solicitors for Morgan County then introduced RALPH REYNOLDS, a competent witness, who, having been by me first duly sworn according to law, testified as follows in answer to the following interrogatories:

Int. 1. Were you or not a resident of the city of Jacksonville
362 at the time the city voted a subscription of $50,000 to the capital stock of the P. P. & Jacksonville Railroad Company, and state as nearly as you can the date when that subscription was voted on by the city of Jacksonville.

Ans. 1. I was citizen here at that time; by reference to the city records I find it was on September 10, 1868.

Int. 2. Was there at that time any inquiry on the part of the citizens of Jacksonville as to whether the bonds of Morgan County, payable to the Illinois River Railroad Company, or any of them, could be used so as to lessen the amount to be subscribed by the city of Jacksonville, and state what you know upon that point.

Ans. 2. There was a doubt about carrying the vote for the $50,000. I asked Mr. Morrison if any or all of these bonds could be applied towards finishing the road into Jacksonville, and I think he replied that he thought not; that he would examine the question and see if

they could be used; he afterwards said to me that they could not be used.

(Question and answer objected to because wholly immaterial in this case.)

Int. 3. Do know whether or not Mr. Allen, one of the plaintiffs in this case, knew anything on that point?

363 Ans. 3. I do not know anything about it.

Int. 4. Was there not a committee that waited on Mr. Allen in reference to the said subscription and the amount necessary to be subscribed by the city? And if so, state what you know in relation to that matter.

Ans. 4. There was a committee of three appointed at a citizens' meeting to wait on Mr. Allen at Pekin, Ill's. I was one of that committee. We had a conference with him at Pekin, and finally it was arranged for him to meet us here at the Dunlap House, in Jacksonville. A number of citizens were invited to meet Mr. Allen, Mr. Morris being one of that number. We finally got Mr. Allen to agree to bring his road into the city for $50,000 in city bonds, and that is all I know about it.

(Question and answer objected as immaterial.)

Int. 5. Was it at that time known whether or not any aid could be obtained towards building the road from Virginia to Jacksonville from the county of Morgan, and have you any knowledge whether or not Mr. Allen knew that no aid could be obtained from the county of Morgan towards building said road?

Ans. 5. I think it was pretty well settled that no aid could be got from Morgan County. I remember I said to Mr. Allen that there

364 was no use trying to get any aid from the county; that all our dependance must be in the city vote.

(Question and answer objected to because immaterial.)

Cross-examined:

Int. 1. You speak of making inquiry of Mr. Morrison as to making use of Illinois Railroad bonds in building the P. P. & J. Railroad from Virginia to Jacksonville; state whether or not the inquiry of Mr. Morrison mentioned was all the enquiry you made or knew of being made on that subject.

Ans. 1. I don't remember of any in particular except that made by myself.

Int. 2. Was Mr. Morrison at that time occupying any official position connected with the county, or was he only a private citizen?

Ans. 2. I think only a private—acting as an intended private citizen.

R. REYNOLDS.

The solicitors for Morgan County then produced and filed with me two certificates of the clerk of the county court of Morgan County, as follows: One concerning the delivery of certain bonds marked by me Exhibit D D; one concerning fees and costs paid by Morgan

365 County, marked Exhibit E E.

The complainants then produced and filed with me certified copy of record of county court of Morgan County, commencing with election notice and ending with order March 6, 1869, which I mark Exhibit 1.

Also certified copy of register of Illinois River Railroad bonds, marked by me Exhibit 2.

Also certified copy of bill in case of James Blair et al. vs. Illinois

River Railroad, Morgan County et al.; also, supplemental bill of Henry T. Thomas, admr., and Francis Low, filed in said case of Blair et al. vs. Illinois River Railroad Company, Morgan County, et al.

Also entry of appearance of Illinois Railroad Company, by B. S. Prettyman, in said Blair case.

Also decree in case of Henry T. Thomas, admr., et al., vs. Morgan County et al., dated May 28th, 1866.

Also decree in case of Elliott and Brown vs. Morgan County et al., rendered Oct. 8, 1863.

Also stipulation on the book, marked by me Exhibit 3.

366 Also certified copy of answer of Morgan County in case of Elliott and Brown, filed 31st July, 1863. Also, cross bill of Morgan County in case of Richard S. Thomas vs. Morgan County et al. Also amended answer of Morgan County in case of Richard S. Thomas vs. Morgan County et al. Also, answer of Morgan County in case of Blair et al. vs. Illinois Railroad Company, Morgan County et al.

Also answer of Morgan County in case of William Thomas vs. Morgan County et al.

Also answer of Morgan County in case of M. H. L. Schivly vs. Morgan County et al.

Also answer of Morgan County in case Benjamin West vs. Morgan County et al.

Also master's report, filed May 8th, 1876, in case of Morgan County vs. P. P. and Jacksonville Railroad et al., marked by me Exhibit 4.

Also certified copy of bond No. 26, with coupons, in series of bonds from Morgan County to Illinois Railroad Company, marked by me Exhibit 5.

Also case Morgan County et al. vs. William Thomas et al., 76 vol. Ills. Reports, beginning on page 120 and ending on page 148.

367 Deposition of Edward R. Elliott and William Brown, with the exhibits therein referred to, marked by me No. 6.

Also certified copy of order of Illinois River Railroad Company that president and secretary issue stock, marked by me 7.

Also exhibits to bill of complainants in this suit, filed in U. S. circuit court.

Also certified copy of bill and amended bill and final decree in case of Morgan County vs. P. P. & J. Railroad Company et al., marked by me Exhibit 8.

Also record papers and proceedings in U. S. circuit court in case of Studwell, Hopkins & Cobb, trustees, vs. Illinois Railroad Company et al., to foreclose trust deed executed by said railroad company to said trustees. Also the execution issued on the judgment or decree therein.

Also decree of supreme court in case Morgan County et al. vs. Thomas et al., marked by me Exhibit 9.

368 No objection was offered before me to the introduction of any of the foregoing papers, documents, or records except as follows:

Morgan County, by her solicitor, objected to the introduction of the case of Morgan County et al. vs. William Thomas et al., as repeated in 76 Ill., on the ground that the statement of the case by the judge who gave the opinion would be hearsay. Morgan County, by her solicitor, also objected to the deposition of E. R. Elliott and Wm. Brown as indirect, because taken in a case when the parties were different and because Elliott' testimony has been taken in this case.

UNITED STATES OF AMERICA,
Southern District of Illinois, County of Morgan and City of Jacksonville, ss:

I, Henry Stryker, jr., special commissioner appointed by the court to take the testimony in the causes mentioned in the foregoing caption, hereby certify that the foregoing depositions of Stephen Dunlap, John Trabue, William S. Hook, Isaac L. Morrison, Herbert G. Whitlock, Henry B. McClure, Edward R. Elliott, John Allen, William Thomas, on the part of complainant, and the foregoing depositions of Robert Hockenhull, Felix G. Farrel, James Berdan, William Thomas, Henry
369 E. Dummer, William S. Hook, and Edward Scott, on part of the defendants, were taken before me, at my office in said city, in accordance with the attached notice and at the time therein and in said depositions mentioned. That the solicitors for the parties, Messrs. Campbell, Dummer and Springer, and also Mr. Isaac L. Morrison, was present throughout the entire examination, conducting the same for the respective parties. That all of said witnesses were by me first duly sworn according to law; that the foregoing interrogative' were by me propounded to them and by them answered, and their answer by me reduced to writing in the words, figures, and order therein appearing, and the same were by the said defendants duly sworn to and signed respectively in my presence.

I further report that I examined the Illinois River Railroad bonds mentioned in the testimony of John Allen in answer 6 of his direct examination as being in his possession, the same being left with me by stipulation of counsel for examination. Said bonds are th rteen hundred and twenty in number. Seven hundred and twenty are of the denomination of one thousand dollars, and six hundred are of the denomination of five hundred dollars. I return herewith two of
370 said bonds (as provided by said stipulation), one of each denomination—No. 707, $1,000, marked by me Exhibit 10, and No. 800, $500, marked by me Exhibit 11. The complainants' exhibits are marked from A to E and from 1 to 11, both letters and numbers inclusive, and defendants' exhibits are marked from F to E E, both inclusive; and I now return into court with their depositions the said exhibits and notices, both parties having notified me that they desired to take no further testimony before me.

Witness my hand this 12th day of Sept., 1876.

HENRY STRYKER, JR.,
Special Commissioner.

371 Circuit court of the United States for the southern district of Illnois.

JOHN ALLEN AND OTHERS
vs.
MORGAN COUNTY AND OTHERS.

You are hereby notified that on the 11th day of April, A. D. 1876, the defendants will proceed to take the depositions of witnesses to be read on the trial of the above-entitled suit pending in the circuit court of the United States for the southern district of Illinois, before Henry Stryker, jr., appointed to take testimony in this case by said court, at his office, in Jacksonville, Morgan County, Ill's, said depositions to be taken be-

tween the hours of 9 o'clock a. m. and 6 o'clock p. m., and the taking to be continued from day to day until completed.

To John Allen and others.

J. T. SPRINGER AND DUMMER AND BROWN,
Sols. for Defendants.

If Messrs. Campbell and Morrison cannot attend on the 11 April, we will consent to a postponement on a reasonable time.

D. & B. & SPRINGER.

Service acknowledged March 17, 1876.

DEARBORN & CAMPBELL,
Att'y' for Compl'ts.

372 In the circuit court of the United States for the southern district of Illinois. In equity.

JOHN ALLEN, EDWIN L. TROWBRIDGE, AND Aaron Arnold,
vs.
MORGAN COUNTY, PEORIA, PEKIN & JACKSONville Railroad Company, Isaac L. Morrison, and Henry E. Dummer.

To Henry E. Dummer, defendant; Henry E. Dummer and Brown and J. T. Springer, solicitors for Morgan County:

You are hereby notified that on the 4th day of March, 1876, at the hour of 9 o'clock in the morning of said day, and continuing from day to day until through, before Henry Stryker, jr., the special commissioner appointed in this suit, at his office, in the city of Jacksonville, Morgan County, Illinois, the complainants will take testimony in this cause, when and where you can appear and cross-examine if you see fit; you are further notified to produce the evidence and testimony in your
373 behalf and in behalf of your client at said time and place.

Dated at Jacksonville, this 3rd day of M'ch, 1876.

DEARBORN & CAMPBELL,
Sol's for Compl'ts.

We hereby acknowledge the receipt of a true copy of the above notice this 3rd day of March, 1876.

J. T. SPRINGER & DUMMER & BROWN,
Sol's for Morgan County, &
H. E. DUMMER, *Pro Se.*

374 EXHIBIT A.

STATE OF ILLINOIS,
[illegible] *Morgan Co.:*

Special Nov'r term, 1867.

JAMES BLAIR ET AL.
vs.
ILLINOIS R. R. R. CO. ET AL. } Creditors' bill.

It is agreed that all the Morgan County bonds received by the complainants in the above-entitled suits may be redeemed by the payment

to complainants of $6,000 in Morgan County bonds and $6,000 in money, being $12,000 in all. In the event that Morgan County may decree it, credit shall be given in the cash payment for a short time, not exceeding ————.

It is further stipulated that one of said Morgan bonds & cash, the claim of William Thomas, $4,000, shall be paid pro rata with the complainants.

HENRY E. DUMMER,
Solicitors for Complainants.

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, cl'k.

EXHIBIT B.

[E. R. Elliott. Exchange and Banking Office. Wm. Brown, of Elliott & Brown.]

JACKSONVILLE, ILL., *Dec.* 17, 1857.

Doct. M. H. L. SCHOOLEY,
Sec'y Illinois River Railroad Company, Virginia, Illinois:

375 DEAR SIR: Yours of 10th inst., inclosing a certificate for 500 shares of stock in the Ill. Riv. Railroad Company in favor of Morgan County, and also a certificate of board on the same subject. The court of this county directed the 1st coupon to be cut off and then the bonds to be delivered to order of your board upon receipt of certificate of stock as above; accordingly we certify that we hold $50,000 Morgan County bonds with 1st coupon cut off, subject to order of board of directors of the Illinois River Railroad Company.

Respectfully,

ELLIOTT & BROWN.

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, cl'k.

EXHIBIT C & D.

STATE OF ILLINOIS,
Morgan County:

Of the special September term, A. D. 1873, of the Morgan County circuit court.

MORGAN COUNTY
vs.
PEORIA, PEKIN, AND JACKSONVILLE RAILROAD Company.

And now, on this day come the parties, and on motion of Morgan County leave is given to amend the original bill which is accordingly done, and afterwards came the county of Morgan and filed its
376 motion in writing to suppress portions of certain depositions, which motion is in words and figures following, to wit:

Motion to suppress depositions.

U. S. AMERICA:

Cir. court of the U. S. for the S. district of Illinois.

JOHN ALLEN, EDWIN L. TROWBRIDGE, AND Aaron Arnold, deceased,
vs.
THE COUNTY OF MORGAN, HENRY E. DUMmer, The Peoria, Pekin, and Jacksonville Railroad Company, and Isaac L. Morrison.

The defendants move the court to suppress all the testimony of Isaac L. Morrison having any relation to the following suits, anything relating to the prosecution of the same, or to impeaching in any way or to any degree the decrees rendered in said suits, or the execution of said decrees: Elliott & Brown vs. Morgan Co. et al., Richard S. Thomas vs. Morgan Co. et al., Blair et al. vs. Morgan Co. et al., on the ground that he was the solicitor of Morgan County in all of said suits, or one of them, & all his testimony discloses knowledge, communications, & information which are privileged.

2d. The defendants move to suppress, so far as Morgan County is concerned, the testimony of Herbett G. Whitlock having any relation to the suit of Blair et al. vs. Morgan County et al., anything relating to the prosecution of said suit, or to impeaching in any way or to any degree the decree rendered in the same, & ask the execution of said decree, on the ground that he was one of the solicitors of Morgan County and said suits.

377

3d. The defendant, Morgan Co., moves to suppress the following, offered in evidence before the special master & filed with him:

1. The opinion as reported of the S. court in the case of Morgan County vs. William Thomas et al., the summary of the facts being offered in evidence, on the ground that it is hearsay evidence.

2d. The depositions of Elliott & Brown, Edward R. Elliott & William Brown, taken in a case in which there was not the same parties plaintiffs & defendants as in this case.

DUMMER, BROWN & RUSSELL.
J. T. SPRINGER, *Sol's for M. County.*

(Endorsed:) Filed Sept. 20th, 1876. J. A. Jones, cl'k.

And thereupon the court, not then having examined said exceptions, enquired of the solicitors of the parties interested if any of said exceptions were of a formal character which could be obviated by retaking the depositions; and being in the negative, the court reserved its decision of said motion until the hearing.

378 WILLIAM THOMAS
vs.
MORGAN COUNTY.

On this day came William Thomas and dismissed his bill as to Lucius Hopkins, Alexander Studwell, & George F. Cobb.

COUNTY OF MORGAN
vs.
P., P. & J'VILLE R. R. COMPANY ET AL. } Original bill in chancery.

WILLIAM THOMAS
vs.
MORGAN COUNTY ET AL. } Original bill in chancery.

MAHLON H. L. SCHOOLEY
vs.
MORGAN COUNTY ET AL. } Cross bill.

BENJAMIN WEST
vs.
MORGAN COUNTY ET AL. } Cross bill.

And now, on this day, came the parties in all of the above-entitled suits and filed their stipulations in relation to the trial of the above entitled cases, which stipulation is in the words and figures following, to wit; and therefore it is ordered by the court that said cases be consolidated and tried as one suit; and afterwards these cases above entitled came on to be heard upon the pleadings and proof following, to wit:

The admission that the copies of notes and due bills set out
379 in the transcript of records in the cases of Blair vs. Ill's R. R. Road Co., Addis vs. Ill. R. R. Co., Dye vs. Ills. R. R. Co., McKee vs. Ill. R. R. Co., Haines et al. vs. Ill. R. R. Co. are true copies of the original notes sued on in said cases, to have the same force and effect as the original notes and due bills; and the court being now fully advised of and concerning the premises, it is considered and adjudged by the court—

1st. That the bonds of Morgan County originally issued to the Illinois River Railroad Company, dated the 10th September, 1857, for five hundred dollars each, numbered from No. 61 to No. 80 inclusive, amounting to ten thousand dollars, heretofore delivered to the Peoria, Pekin & Jacksonville Railroad Company, together with the interest coupons thereto belonging maturing on the 1st March, 1870, and thereafter, be restored to the custody of the county of Morgan by the delivery of the same to the clerk of the Morgan County court by the said Peoria, Pekin and acksonville Railroad Company, on or before the first day of November, 1873.

2d. That the bonds of Morgan County originally issued to the Illinois River Railroad Company dated the 10th day of September, 1857, for five hundred dollars each, numbered from No. 83 to No. 100 inclusive, amounting to nine thousand dollars, heretofore delivered to the
380 Peoria, Pekin and Jacksonville Railroad Company, and by said company transferred to Isaac L. Morrison and now in the possession of the said Morrison, be restored together with the interest coupons thereto belonging, maturing on the 1st day of March, 1870, and thereafter, to the custody of the County of Morgan by the delivery of the same to the clerk of the Morgan County court on or before the 1st day of November, A. D. 1873.

3d That the said bonds, when restored to the custody of the county of Morgan, shall be held, except so far as the same are disposed of by this decree, as the same were held previous to their delivery to the said Peoria, Pekin & Jacksonville Railroad Company.

4th. That of the bonds so restored to the custody of the said county of Morgan the said county of Morgan shall within ten days after acquiring possession thereof deliver to William Thomas, in discharge of his claim as assignee of Allen and McGrady, eight of said bonds with interest coupons thereto belonging from March, 1860.

5th. That if the county of Morgan shall not be able to deliver to said William Thomas coupons as above directed by reason of their cancellation or otherwise, then in lieu of said coupons not delivered the county shall pay on delivery of said eight bonds the equivalent value at par in money.

6th. That Mahlon H. L. Schooley is adjudged to have a claim
381 against the Illinois River Railroad Company to the amount of one thousand and twelve dollars and eighty four cents, and the said Benjamin S. West is adjudged to have a claim against the Illinois River Railroad Company to the amount of one hundred and sixty three dollars & sixty-four cents; that the said bonds of Morgan County not disposed of by this decree are assetts applicable to the payment of said claims of Schooley & West; that of said bonds so to be restored to the custody of Morgan County and not otherwise disposed of by this decree the county of Morgan shall deliver to the master in chancery of Morgan County within ten days after acquiring possession of the same so many of said bonds with coupons attached as will procure a sum sufficient to pay the claims of the said Schooley and West, and the cost of their cross bills; that the said master in chancery sell said bonds so delivered to him with coupons attached at public sale for cash, and apply the proceeds of sale to the payment of the claims of said Schooley & West with six per cent. interest from the date of this decree & cost of sale, and costs of cross bills adjudged as aforesaid, the said master having first given twenty days' notice of the time, place, and terms of sale by publication in some newspaper published in Jacksonville, Illinois.

382 7th. That the Peoria, Pekin and Jacksonville Railroad Company and Isaac L. Morrison pay the cost of the said suit of the County of Morgan against the Peoria, Pekin and Jacksonville Railroad Company & others.

8th. That the county of Morgan pay the cost of the suit of William Thomas against the county of Morgan & others, and the cost of the cross-bills of Schooley & West.

9th. That the master in chancery report his actings and doings in the premises of this court.

10th. And thereupon each of the parties to the above-entitled suits, consolidated as aforesaid, prayed, an appeal to the supreme court of Illinois, which is allowed by the court to all and each or any member of said complainants & defendants in said suits so consolidated, upon the condition that any party or parties appealing shall file, on or before the 1st day of November, A. D. 1873, an appeal bond in the penal sum of five hundred dollars, with good and sufficient security, conditioned as required by law in cases of appeals from the circuit to the supreme court, in the office of the clerk of the Morgan County circuit court, the security to be approved by said clerk.

C. L. HIGBEE.

STATE OF ILLINOIS,
Morgan County, ss:

383 I, J. W. Caldwell, clerk of the circuit court of Morgan County and State aforesaid, do hereby certify that the foregoing is truly copied

from a decree rendered in the said court, in the above-entitled causes, at a special September term, A. D. 1873, and the orders numbered from 1 to 10, inclusive, are all the orders decreed by the said court in the above-entitled causes.

In testimony whereof I have hereunto set my hand and the seal of said court, at Jacksonville, this 10th day of October, A. D. 1875.

[L. S.] J. W. CALDWELL,
Clerk.

Fee, $2.00; paid by I. L. Morrison.

STATE OF ILLINOIS,
Morgan County:

I, Samuel M. Martin, as clerk of the county court for said county, and for the county of Morgan, do hereby acknowledge the receipt from the Peoria, Pekin and Jacksonville Railroad Company, under and by virtue of the within decree, from John Allen, as the president of said railroad company, eleven of the bonds mentioned in said decree, being numbered 61 to 71, both inclusive, with the interest coupons therein due on the first day of March, 1870, and thereafter.

Witness my hand and the seal of said court this 11th day of December, 1875.

[L. S.] SAMUEL M. MARTIN,
Clerk.

384 (Endorsed:) Filed Sept. 14, 1876. J. A. Jones, clerk.

EXHIBIT E.

STATE OF ILLINOIS,
Morgan County:

I, Samuel M. Martin, as clerk of the county court for said county of Morgan, and on behalf of said county, do hereby acknowledge the receipt from the Peoria, Pekin and Jacksonville Railroad Company, and the restoration to the custody of said county, under and by virtue of a decree of Judge C. L. Higbee, made at the special term, A. D. 1873, of the circuit court for said Morgan county, of nine of the bonds of Morgan County mentioned in said decree, as heretofore delivered to the aforesaid railroad company, which were originally issued to the Illinois River Railroad Company, dated the 10th day of September, 1857, for the sum of five hundred dollars each, numbered from 72 to 80 inclusive, amounting to for y-five hundred dollars of principal, together with the interest coupons thereto belonging, maturing on the 1st of March, 1870, and thereafter.

Witness my hand and seal of said county court this 11th day of April, 1876.

[L. S.] SAMUEL M. MARTIN,
County Clerk.

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, clerk.

385 EXHIBIT F.

UNITED STATES OF AMERICA,
State of Illinois, Mason County, ss:

In circuit court, October term, A. D. 1866.

Pleas before the honorable James Harriott, judge of the twenty-first

judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Mason County, in the State aforesaid, and at a term thereof begun and held at the court-house in the town of Havana, in said county, on the fourth Monday (being the twenty-second day) of October, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the said United States the ninety-first.

Present: Honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois; C. A. Roberts, State's attorney; L. M. Hilyer, sheriff.

Attest:

JNO. H. HAVIGHORST,
Clerk.

Whereas on the 21st day of November, A. D. 1866, the following declaration was filed in a cause then pending, in which A. & J. Haines were plaintiffs, and Illinois River Railroad Company was defendant, in words and figures following, to wit:

386 The circuit court for the county of Mason, in the State of Illinois, of the October term, A. D. 1866.

A. & J. HAINES
vs.
ILLINOIS RIV. R. R. CO.

STATE OF ILLINOIS,
County of Mason:

Ansel & Jonathan Haines, partners under the name of A. & J. Haines, complain of the Illinois River Railroad Company, defendants in this suit, &c., in a plea of trespass on the case of promises: for that whereas the said defendant heretofore, to wit, on the 7th day of April, in the year of our Lord one thousand eight hundred and sixty-two, at Virginia, made then their two certain orders on the money of that date, in and by which said orders the said defendant promised to pay B. S. Prettyman $800.00 and $725.48 respectively, making the sum of $1,525.48 *dollars* for value received, which said time hath long since elapsed, and said orders become due and payable according to its tenor and effect, to wit, at the said county, and said Prettyman, att'y, then assigned the same unto the said plaintiff, by which defendant became liable to pay the same to plaintiff, who demanded the same of said Ills. Riv. R. R. Co and payment thereof was refused, when the de-
387 fendant became liable to pay plaintiff the said sum aforesaid.

And whereas, also, the said defendant afterwards, to wit, on the day and year and at the place aforesaid, became and was indebted unto said plaintiff in the further sum of two thousand dollars, for so much money by the said plaintiff before that time lent, and advanced to, and paid out, and expended for said defendants, at said defendants' request, and for money had and received by said defendant, to and for the use of the said plaintiffs, and for goods, wares, and merchandise sold by said plaintiff to said defendant, at the instance and request of said defendant, and for interest due from said defendant to said plaintiff, and for work and labor heretofore done and performed by the said plaintiff for the defendants, and at the special instance and request of said defendants, and for their use and benefit, and being so indebted, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year and at the place aforesaid, promised to pay said plaintiff the said

last mentioned sum of money when thereunto afterwards requested. Yet the said defendants, although often requested, have not paid
388 either of said sums of money above mentioned, or any part thereof, but to pay the same, or any part thereof, have hitherto wholly refused, and still doth refuse, to the damage of said plaintiff of five thousand , and therefore he brings suit, &c.

HENRY E. DUMMER,
Attorney for Plaintiff.

No. 384.] OFFICE OF THE ILLINOIS RIVER RAILROAD CO.,
Virginia, April 7th, 1862.

Treasurer of the Illinois River R. R. Company pay to B. S. Prettyman, esq, or order, seven hundred twenty-five $\frac{48}{100}$ dollars, it being for balance salary, as att'y, and sundry incidental and traveling expenses, &c., as per bill filed, and charge the same to this company.
$725.48.

R. S. THOMAS, *Pres't.*

M. H. L. SCHOOLEY, *Sec't'y.*

(Endorsed:)
Pay A. J. Haines.

B. S. PRETTYMAN.

(Also endorsed:) Filed November 23d, 1866. Jno. H. Havighorst, c'k.

No. 383.] OFFICE OF THE ILLINOIS RIVER RAILROAD COMPANY,
Virginia, April 7th, 1862.

Treasurer of the Illinois River R. R. Company pay to B. S. Prettyman, esq., or order, eight hundred dollars, it being for salary, as att'y, and sundry incidental and traveling expenses, &c., &c., per bill, and charge the same to this company.
389 $800.00.

R. S. THOMAS, *Pres't.*

M. H. L. SCHOOLEY, *Secretary.*

(Endorsed:)
Pay A. & J. Haines.

B. S. PRETTYMAN.

(Also endorsed:) Filed November 23rd, 1866. Jno. H. Havighorst, c'k.

Afterwards, to wit, on the 23rd day of Nov., 1866, it being the seventeenth day of said term of court, the following order was made in the above-entitled cause, in words and figures following, to wit:

A. & J. HAINES
vs.
ILLINOIS RIVER R. R. CO. } Assumpsit.

This day come the plaintiffs, by H. E. Dummer, their attorney, and also the defendants, by Benjamin S. Prettyman, their vice-president and attorney, who enters their appearance herein; and on motion of plaintiffs' attorney it is ordered that defendants be called and ruled to answer or plead herein instanter, and they, being so called, come not, nor comes any one for them, but wholly make default, and the court having now heard the evidence adduced, and being sufficiently advised in the premises, doth consider and order that the plaintiffs have and recover of the said defendants the sum of two thousand six hundred and fifty and $\frac{68}{100}$

dollars, as damages by them sustained in this behalf, and also
390 their costs in this behalf expended, and that they have execution therefor.

Afterwards, to wit, on the 7th day of February, A. D. 1867, the following execution was issued, in words and figures following, to wit:

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff of Mason County, greeting:

We command you that of the goods and chattels, lands, and tenements of the Illinois River Railroad Company, defendants, in your county, you cause to be made the sum of two thousand six hundred and fifty dollars and sixty-eight cents, which Ansel & Jonathan Haines, partners in the name and style of A. & J. Haines, plaintiffs, lately in the circuit court of said Mason County, at a term thereof begun and held at Havana, in said Mason County, on the fourth Monday of October, A. D. 1866, recovered against the said defendants, and which by the said court was adjudged to the said defendants in a certain action of assumpsit, and also the further sum of seven dollars and twenty-five cents, which were adjudged to the plaintiffs for costs and charges in that behalf expended, whereof the said defendants stand convicted, as appears to us of record.

391 And have you these moneys ready to render to the said plaintiffs for damages and costs aforesaid, and make return of this writ with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness John H. Havighorst, clerk of said court, and the seal thereof, at Havana, in said county, this 7th day of Feb., A. D. 1867.

[SEAL.] JOHN H. HAVIGHORST, *Clerk*,
Per W. E. KNOX, *Deputy Clerk*.

On the back of said execution appears the following return, to wit:

I return this execution in no part satisfied, no property of the Illinois River Railroad Company, the defendants, being found in my county.
March 6th, 1867.

JAS. L. HASTINGS, *Sheriff*.

Filed March 6th, 1867.

392 Fee-book F, page 350.

STATE OF ILLINOIS,
Mason County, ss:

In the circuit court, October term, A. D. 1866.

IN THE MATTER OF A. & J. HAINES
vs.
ILLINOIS RIVER RAILROAD CO.

Plaintiffs' costs.

Clerk's fees: Appearance and attorney, 15c.; docketing suit, 20c.; filing $\frac{a}{c}$ and narr., 10c.; bonds for costs and filing ent. ex., 25c.; filing

2 notes, 20c.; summons and filing c.; entering default, 25c.; order for judgment, 25c.; order for clerk to assess, c.; order to report, c.; assessing and reporting, c.; order confirming, c.; order for damages, 25c.; order for costs, 25c.; docketing judgment, 25c; order for execution. 25c.; execution, 50c.; filing and docketing, 25c.; order taxing costs, 25c.; bill of costs, 50c.; copyright do., c.; certificate and seal, 35c; entering sheriff's return, 15c.; satisfaction of judgment, 23c.; filing prec. for ex., 10c.; satisfaction costs, 10c.; index, 30; mod. ord. c. o. 50; nev. & rul. caus., 50—6.25.

Docket fee, 1 00 stamp.

Sheriff's fees: Serving and returning summons, ; mileage, ; miles, .

Defendant's costs.

393 Fil. & ent., app. att'y, 25; bill costs, 50; spa., 10; iss. & fil. s'b., 60; dk. & ent., 30c.; c. & s., 35—$2.10.

Jno. H. Havighorst, clerk of the circuit court of the said county of Mason, do hereby certify that the above is a true copy from my fee-book of plaintiffs' costs and of defendant's costs.

Given under my hand and the seal of said court.

[SEAL.] JNO. H. HAVIGHORST, *Clerk.*

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff of Mason County, greeting:

We command you that if the above fee bill, amounting to two dollars and ten cents, shall not be paid within thirty days, after being by you demanded, you cause the same to be levied on the goods and chattels, lands and tenements of the said Illinois River Railroad Company, in your county, according to the statute in such case made and provided, and make return of this writ within ninety days as the law directs, with an indorsement hereon in what manner you have executed the same.

Witness Jno. H. Havighorst, clerk of the circuit court of said county, and the seal thereof, at Havana in said county, this 7th day of Feb'ry, A. D. 1867.

[SEAL.] JNO. H. HAVIGHORST, *Clerk.*

394 I, Leonard Schwenk, clerk of the circuit court of Mason County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the record and the papers on file in a certain cause then pending in said court on the common law side thereof, wherein A. & J. Haines were plaintiffs and Illinois River Railroad Company was defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Havana this 9th day of December, A. D. 1872.

[SEAL.] LEONARD SCHWENK, *Clerk.*

(Endorsed:) Exhibit F. Henry Stryker, jr., special commissioner. Endorsed also, Filed Sept. 14, 1876. J. A. Jones, clerk.

395 EXHIBIT G.

In circuit court, June term, 1861.

UNITED STATES OF AMERICA,
State of Illinois, Tazewell County, ss:

Pleas before the honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Tagewell County, in the State aforesaid, and at a term thereof begun and held at the court house, in the city of Pekin, in said county, on the first Monday (being the 3rd day) of June, in the year of our Lord one thousand eight hundred and sixty-one.

Present, honorable James Harriett, judge of the 21st judicial circuit of the State of Illinois. George H. Harlow, clerk. Hugh Fullerton, State's attorney. C. Williamson, sheriff.

Attest:

G. H. HARLOW, *Clerk.*

IN THE MATTER OF GEORGE W. DYE, PLAINTIFFS,
vs.
ILLINOIS RIVER R. R. CO., DEFENDANTS. } Assumpsit.

Be it remembered that heretofore, to wit, on the 29th day of April, A. D. 1861, came the above named plaintiff by attorneys and filed his præcipe as follows, to wit:

396 In the circuit court, June term, 1861.

STATE OF ILLINOIS,
Tazewell County, ss:

GEORGE W. DYE
vs.
ILLINOIS RIVER RAILROAD COMPANY. } Assumpsit. Damages, $500.00.

The clerk will please issue as above to the sheriff of Tazewell County returnable as above.

ROBERTS & IRELAND,
For Plaintiff.

Filed April 29th, 1861.

GEORGE H. HARLOW, *Clerk.*

Thereupon a writ issued in words and figures following, to wit:

STATE OF ILLINOIS,
Tazewell County, ss:

In the name of the people of the State of Illinois, to the sheriff of said county, greeting:

We command you that you summon Illinois River Railroad Company, if they shall be found in your county, personally to be and appear before the circuit court of said Tazewell County on the first day of the next term thereof, to be holden at the court-house, in the city of Pekin, in said Tazewell County, on the first Monday of June, 1861, to answer
397 unto George W. Dye in a plea of assumpsit, to the damage of

said plaintiff, as he says, in the sum of five hundred dollars, and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness George H. Harlow, clerk of said circuit court, and the seal thereof hereto affixed at Pekin, on this 29th day of April, A. D. 1861.

[SEAL.] GEORGE H. HARLOW, *Clerk*,
Per A. P. GRISWOLD, *Deputy*.

(Endorsed:)

STATE OF ILLINOIS,
Tazewell County, ss:

I have duly served the within writ this 6th day of May, 1861, by reading the same and delivering a true copy of the same to John S. Cook, the agent of the within named defendant, and I do further certify that I cannot within my county find the president of the said Illinois River Railroad Company, this May 6th, 1861.

C. WILLIAMSON, *Sheriff*,
Per WILL. C. ADAMS, *Deputy*.

(Endorsed:) Filed in the circuit court this 18th day of May, A. D. 1861. G. H. Harlow, clerk.

And on the 29th day of May, 1861, said plaintiff files his declaration as follows, to wit:

398 In the Tazewell County circuit court, June term, A. D. 1861.

STATE OF ILLINOIS,
Tazewell County, ss:

George W. Dye, the plaintiff in this cause, by Roberts and Ireland, his attorneys, complain of the Illinois River Railroad Company, the defendant in this cause, in a plea of trespass on the case upon promises, for that whereas the said defendant heretofore, to wit, on the 28th day of January, A. D. 1861, at, to wit, Tazewell County aforesaid, made its promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby then and there acknowledged to be due to the said plaintiff the sum of two hundred and sixty-nine dollars, being balance for services rendered by him as foreman in track-laying in Tazewell County, and then and there delivered the said promissory note to the said plaintiff, by means whereof and by force of the statute in such cases made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in the said promissory note specified according to the tenor and effect of said promissory note. And being so liable, it, the said
399 defendant in consideration thereof, afterwards, to wit, on the day and year aforesaid, to wit, at Tazewell County aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified according to the tenor and effect thereof.

For that whereas, afterwards, to wit, on the 1st day of March, A. D. 1861, at, to wit, at Tazewell County aforesaid, said defendant was indebted to the said plaintiff in the sum of five hundred dollars for so much money by the said plaintiff before that time lent and advanced to the said defendant at its special instance and request; and in the further sum of five hundred dollars for so much money by the said plaint-

iff before that time paid, laid out, and expended to and for the use of the said defendant at his like special instance and request; and in the further sum of five hundred dollars for so much money by the said defendant before that time had and received to and for the use of the said plaintiff; and in the further sum of five hundred dollars for the work and labor, care and diligence of the said plaintiff before that time done, performed, and bestowed in and about the business of the said
400 defendant, and for the said defendant at its special instance and request. And being so indebted, it, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, to wit, at Tazewell County aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said several sums of money when it, the said defendant, should be thereunto afterwards requested, nevertheless the said defendant, not regarding its several promises and undertakings, but contriving and fraudulently intending to deceive and defraud the said plaintiff in this behalf, hath not as yet paid the said several sums of money above mentioned, or any, or either of, or any part thereof, to the said plaintiff, although often requested so to do by the said plaintiff, but the said defendant to pay him the same hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiff of five hundred dollars.

And therefore he bring his suit, &c.

ROBERTS AND IRELAND,
Pl'ff's Att'ys.

Copy of note sued on.

401 $269.0 .] JANUARY 28TH, 1861.

Due to George W. Dye the sum of two hundred and sixty-nine dollars, being balance for services rendered by him as foreman in track-laying in Tazewell County.

ILLINOIS RIVER RAILROAD COMPANY,
By R. S. THOMAS, *Its President.*

Filed May 24th, 1861.

GEORGE H. HARLOW,
Clerk.

And afterwards, to wit, on the 17th day of June, 1861, said defendant files its pleas as follows, to wit:

GEORG' DYE
vs.
ILL'S R. R. R. CO.

And the said defendants, by Prettyman their att'y, came and defend the wrong and injury, when, &c., and says actio non, because they say that they did not execute the note in this action sued upon, nor authorize any other person to do so for them; and of this they put themselves upon the country.

PRETTYMAN,
Per Def't.

402 And for further plea in this behalf said def'ts. say actio non, because they say that the said note sued upon is not their deed: and of this they put themselves upon the country.

PRETTYMAN,
Per Def'ts.

And for further plea in this behalf said def'ts say actio non, because they say they did not undertake & promise to pay said plaintiff in manner and form as the said plaintiff doth above complain of against them; and of this they put themselves upon the country.

PRETTYMAN,
For Def'ts.

Filed J 17th, 1861.

G. H. HARLOW,
Clerk.

And afterwards, to wit, on the 17th day of June, 1861, said plaintiff files his note as follows, to wit:

$269.] JANUARY 28TH, 1861.

Due to George W. Dye the sum of two hundred and sixty-nine dollars, being balance for services rendered by him as foreman in track-laying in Tazewell County.

ILLINOIS RIVER RAILROAD COMPANY,
By R. S. THOMAS, *Its President.*

(Enclosed on back:) G. W. Dye.

403 And afterwards, to wit, on the 17th day of June, 1861, being one of the days of the regular June term, 1861, of the Tazewell County circuit court, the following proceedings were had of record herein, to wit:

GEORGE. W. DYE
vs. } 106. Assumpsit.
ILLINOIS RIVER RAILROAD CO.

Now come the parties, by their attorneys, and a jury being waived by consent, this cause is tried by the court, and the court having heard the allegations and proofs of parties and arguments of counsel thereon, is of opinion that the plaintiff hath sustained damages in the sum of two hundred and sixty-nine dollars ($269).

It is therefore ordered and adjudged by the court that the plaintiff have and recover of the said defendants the damages aforesaid in manner and form found as aforesaid, likewise the costs and charges by him about his suit expended, and that execution issue therefor.

404 And afterwards, to wit, on the day of the date thereof, execution was duly issued, the following of which is a true copy of the same, with return and endorsements thereon, to wit:

STATE OF ILLINOIS,
Tazewell County, ss:

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that of the goods, chattels, lands and tenements of the Illinois River Railroad Company to be found in your county, you cause to be made the sum of two hundred and sixty-nine dollars damage and five & $\frac{95}{100}$ dollars costs, which, on the 17th day of June, A. D. 1861, in our circuit court for said Tazewell County, George W. Dye recovered against the said Illinois River R. R. Co., and have you that money, debt, damage in interest thereon from the said 17th day of June, 1861, ready in ninety days from the date hereof to render the said George W. Dye; and

you hereof make due return, with an endorsement of the manner in which you shall have executed the same.

Witness George H. Harlow, clerk, and the seal of said court, at Pekin, this 17th day of June, A. D. 1861.

[L. S.]

GEORGE H. HARLOW,
Clerk Circuit Court,
Per A. P. GRISWOLD, *Deputy.*

405 (Endorsed:)

This execution came to hand June 25th, 1861, at 10 o'clock a. m.

C. WILLIAMSON,
Sh'ff T. Co.,
Per WILL. C. ADAMS,
Dep'y.

STATE OF ILLINOIS,
Tazewell County:

I return this execution, no property found. July 25th, 186 . By order of the pl'ff's att'y.

C. WILLIAMSON,
Sh'ff T. Co.,
Per WM. C. ADAMS, *Dep'y.*

Service, 50; return 10—60 c.

(Also endorsed:) Filed July 24th, A. D. 1861. G. H. Harlow, clerk. No. 5247. Roberts & Ireland, attorneys.

By reference to the execution docket of this court, it is shown that on the 24th day of July, 1861, execution was duly issued out of office of clerk circuit court of Tazewell County in said cause, directed to the sheriff of Peoria County to execute. It does not appear by reference to said docket that said execution was ever returned to this office, and the same cannot be found after due and diligent therefor has been made.

406 STATE OF ILLINOIS,
Tazewell County, ss:

I, W. P. Allensworth, clerk of the circuit court in and for said county, in said State, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record of all proceedings and of all the papers upon the files of our circuit court in a certain cause lately pending therein, on the common law side thereof, wherein George W. Dye was plaintiff, and Illinois River Railroad Company was defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at office, in Pekin, on this 16th day of November, 1872.

[SEAL.]

W. P. ALLENSWORTH, *Clerk.*
T. H. HATCH, *Deputy.*

(Endorsed:) Exhibit G. Henry Stryker, jr., special commissioner.

(Endorsed also:) Filed Sept. 14, 1876. J. A. Jones, clerk.

407 EXHIBIT H.

In circuit court, Oct. term, A. D. 1866.

UNITED STATES OF AMERICA,
State of Ill., Mason County, ss:

Pleas before the honorable James Harriott, judge of the twenty-first judicial circuit of the State of Illinois, and sole presiding judge of the

circuit court of Mason County, in the State aforesaid, and at a term thereof begun and held at the court-house in the town of Havana, in said county, on the fourth Monday (being the twenty-second day) of October, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the said United States the ninety-first.

Present, honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois; C. A. Roberts, State's attorney; L. M. Hillyer, sheriff.

Attest:

JNO. H. HAVIGHORST, *Clerk.*

Whereas, to wit, on the 15th day of November, A. D. 1866, the following declaration was filed in a cause then pending wherein Henry T. Thomas, adm'r of Richard S. Thomas, was plaintiff, and Illinois River Railroad Company was defendant, in the words and figures following, to wit:

Of the October term, A. D. 1866, of the Mason circuit court.

STATE OF ILLINOIS,
Mason County, ss:

408 HENRY T. THOMAS, ADMINISTRATOR OF Richard S. Thomas, deceased, plaintiff, *vs.* ILLINOIS RIVER RAILROAD COMPANY, DEfendant. } Assumpsit.

Henry T. Thomas, administrator of Richard S. Thomas, deceased, complains of the Illinois River Railroad Company, summoned, &c., in a plea of trespass on the case on promises; for that whereas the said defendant heretofore, to wit, on the thirty-first day of January, 1862 (eight hundred and sixty-two), was indebted to the plaintiff's intestate, Richard S. Thomas, to wit, at the said county of Mason, in the sum of sixteen thousand five hundred and two dollars and twenty-four cents, on an account stated by said parties; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, with day and year aforesaid, at the said county of Mason, undertook, and then and there faithfully promised the said Richard S. Thomas, in his lifetime, to pay the said sum of sixteen thousand five hundred and two dollars and twenty-four cents, when he should be thereunto afterwards requested.

2ND COUNT.—Also, for that whereas the said defendant heretofore, to wit, on the thirty-first day of Jan., A. D. 1862, was indebted to the
409 said Richard S. Thomas, now deceased, in his lifetime, in the sum of sixteen thousand five hundred and two dollars and twenty-four cents, for personal services rendered the said Richard S. Thomas in his lifetime to the said defendant, at his special instance and request, and for moneys paid, laid out, expended by the said Richard S. Thomas in his lifetime, at the instance and request of the said defendant; and being so indebted, the said defendant afterwards, to wit, on the day and year last aforesaid, at the said county Mason, undertook, and then & there faithfully promised the said Richard S. Thomas in his lifetime to pay him the said last-mentioned sum of money when he should be thereunto afterwards requested.

3RD COUNT. Also for that whereas the said defendant heretofore was indebted to Richard S. Thomas in his lifetime on the thirty-first day of

January, A. D. 1862, at the said county of Mason, in the sum of sixteen thousand five hundred and two dollars & twenty-four cents, on an account stated by the said Richard S. Thomas in his lifetime, and the said defendant, *the said defendant* on the said 31st day of January, A. D. 1862, at the said county of Mason, in consideration of the forbear-
410 ance of said sum of money, promised the said Richard S. Thomas in his lifetime to pay said Richard S. Thomas ten per cent. interest per annum on the said sum of sixteen thousand five hundred and two dollars and twenty-four cents from the said 31st day of January, A. D. 1862, until the same should be paid—& the plaintiff avers that the said Richard S. Thomas in his lifetime did forbear, and the plaintiff since the death of the said Richard S. Thomas has forborne the collection of said money; yet although often requested the said defendant has not paid the said sums of money in the foregoing counts of this declaration mentioned, nor any part of the same, but the same to do has hitherto wholly refused and neglected and still neglects and refuses, to the damage of the said plaintiff twenty-four thousand four hundred and fifty-six dollars and five cents—& therefore he sues, &c. And the said plaintiff now makes profert of the letters of administration issued by the county of Lake in the said State of Illinois, appointing the said plaintiff the administrator of the goods, chattles, and effects of the said Richard S. Thomas, deceased, & show them here to the court, the
411 date whereof is the day and year therein mentioned.

HENRY E. DUMMER,
Attorney for Plaintiff.

1ST COUNT.—Illinois R. R. R. Co. to Richard S. Thomas Dr., to balance due on account stated, $16,502.24.

2ND COUNT.—Illinois R. R. R. Co. to Richard S. Thomas Dr., to balance due for services & advances, $16,502.24.

3RD COUNT.—Illinois R. R. R. Co. to Richard S. Thomas, Dr., to interest on $16,502.24 at 10 pr. ct. from 31 January, 1862, to date, $7,943.81.

Afterwards, to wit, on the 15th day of November, A. D. 1866, it being the tenth day of said term of court, the following order was made and entered of record in words and figures following, to wit:

HENRY S. THOMAS, ADM'T, &C., *vs.* ILLINOIS RIV. R. R. CO. } No. 124. Assumpsit.

Now on this day comes the plaintiff, by H. E. Dummer, his attorney, and now also comes Benjamin S. Prettyman, vice-president of said Illinois River Railroad Company, and enters the appearance of said defendants herein, and on motion of said plaintiff's attorney it is ordered that said defendants be called and required to answer or plead herein,
412 and they being so called come not, nor comes any one for them, but utterly make default, and thereupon the court proceeded to hear the evidence adduced by said plaintiff and gave judgment for plaintiff against defendants in the sum of twenty-four thousand four hundred and forty-six dollars and five cents damages, and also his costs herein. It is therefore considered and ordered by the court that the plaintiff recover of the said defendants the aforesaid sum of twenty-four thousand four hundred and forty-six and $\frac{05}{100}$ dollars damages as aforesaid, together with his costs in this behalf expended, and that he have execution therefor $24,446.05.

Afterwards, to wit, on the 7th day of February, A. D. 1867, the following execution was issued in the above entitled cause in words and figures following, to wit:

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff of Mason County, greeting:

We command you that of the goods and chattles, lands and tenements of the Illinois River Railroad Company, defendants, in your county you cause to be made the sum of twenty-four thousand four hundred
413 and forty-six ($24,446.05) dollars and five cents, which Henry T. Thomas, administrator of the estate of Richard S. Thomas, deceased, plaintiff, lately in the circuit court of said Mason County, at a term thereof begun and held at Havana in said Mason County, on the fourth Monday of October, A. D. 1866, recovered against the said defendants, and which by the court was adjudged to the said plaintiff in a certain action of assumpsit. And also the further sum of six dollars and eighty cents which were adjudged to the plaintiff for cost and charges in that behalf expended, whereof the said defendants stand convicted as appears to us of record; and have you these moneys ready to render to the said plaintiff for damages and costs aforesaid, and make return of this writ with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness, John H. Havighorst, clerk of said court, and the seal thereof, at Havana in said county, this 7th day of February, A. D. 1867.

[SEAL.] JOHN H. HAVIGHORST, *Clerk*,
Per W. E. KNOX, *Deputy Clerk*.

414 On the back of said execution appears the following return:

I return this execution in no part satisfied, no property of the Illinois River Railroad Company being found in my county March 6th, 1867.

JAS. L. HASTINGS,
Sheriff.

Filed March 6th, 1867.

Fee book F, page 349.

In the circuit court, October term, A. D. 1866.

STATE OF ILLINOIS,
Mason County, ss:

IN THE MATTER OF HENRY T. THOMAS, administrator, &c.,
vs.
ILLINOIS RIVER RAILROAD COMPANY. } Assumpsit.

Plaintiff's costs.

Clerk's fees: Appearance and attorney, 15 c.; docketing suit, 20 c.; filing pre., 10, and narr. 10 c.; bond for costs and filing: Filing note, c.; summons and filing, c.; entering default, 25 c.; order for

judgment, 25 c.; order for clerk to assess, c.; order to report, c.; assessing and reporting, c.; order confirming, c.; order for damages, c.; order for costs, c.; docketing judgment, 25 c.; order for execution, 25 c.; execution, 50 c.; filing and docketing, c.; order taxing costs, c.; bill of costs, c.; copying do., c.; certificate and seal, 35 c.; entering sheriff's return, 15 c.; satisfaction of
415 judgment, 25 c.; filing prec. for ex., 10 c.; satisfaction costs, 10 c.; index, 30; pefer, 25; ord. c't, 25; mo. & rul. pl'd, 50—$5.80; docket fee, 1.00; stamp, $1.00; $1.00; sheriff's fees, $6.80; serving and returning summons, mileage, miles, .

Defendant's costs.

Fil. & ent. app. att'y, &c., 25; B. C. &c., 50; spr., 10; iss. tb., 60; ik. & ent. rec., 30; C. & S., 35—$2.10.

I, John H. Havighorst, clerk of the circuit court of the said county of Mason, do hereby certify that the above is a true copy from my fee book of plaintiff's costs & of defendant's costs, given under my hand and the seal of said court.

[SEAL.] JNO. H. HAVIGHORST,
Clerk.

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff of Mason County greeting:

We command you that if the above fee bill, amounting to two dollars and 10 cents, shall not be paid within thirty days after being by you demanded, you cause the same to be levied on the goods and chattels, lands and tenements of the said Illinois River Railroad Company in your county, according to the statute in such case made and provided, and make return of this writ within ninety days as the law di-
416 rects, with an endorsement hereon in what manner you have executed the same.

Witness Jno. H. Havighorst, clerk of the circuit court of said county, and the seal thereof, at Havana, in said county, this 7th day of Febr'y, A. D. 1867.

[SEAL.] JOHN H. HAVIGHORST,
Clerk.

Leonard Schwenk, clerk of the circuit court of Mason County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the record and the papers on file in a certain cause then pending in said court, on the common law side thereof, wherein Henry T. Thomas, administrator of Richard S. Thomas, was plaintiff, and Illinois River Railroad Company was defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Havana, this 9th day of December, A. D. 1872.

[SEAL.] LEONARD SCHWENK,
Clerk,
By J. K. P. BOWMAN,
Deputy Clerk.

(Endorsed:) Henry Stryker, jr., special commissioner. Endorsed also: Filed Sept. 14, 1876. J. A. Jones, clerk.

417 EXHIBIT I.

In circuit court. September term, 1861.

UNITED STATES OF AMERICA,
State of Illinois, Tazewell County, ss:

Pleas before the honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois and sole presiding judge of the circuit court of Tazewell County, in the State aforesaid, and at a term thereof begun and held at the court house, in the city of Pekin, in said county, on the first Monday (being the 2nd day) of September, in the year of our Lord one thousand eight hundred and sixty-one.

Present, honorable James Harriott, judge of the 21st judicial circuit of the State of Ills.; George H. Harlow, clerk; C. J. Dilworth, State's attorney pro tem.; Chapman Williamson, sheriff.

Attest:

G. H. HARLOW, *Clerk.*

IN THE MATTER OF HENRY SWIFT, PLAINTIFFS, *vs.* ILLINOIS RIVER RAILROAD COMPANY, DEFENDANTS. } In assumpsit.

Be it remembered that heretofore, to wit, on the 23rd day of May, 1861, came said plaintiff by attorneys and filed his præcipe as follows, to wit:

In circuit court. June term, 1861.

STATE OF ILLINOIS,
Tazewell County, ss:

418 HENRY SWIFT *vs.* ILLINOIS RIVER RAILROAD COMPANY. } Assumpsit. Damages $500.00.

The clerk will please issue as above to the sheriff of Tazewell.

ROBERTS & IRELAND,
For Plaintiffs.

In circuit court, Tazewell County, Illinois.

SAME *vs.* SAME.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay, or cause to be paid, all costs that may accrue in this action, either to the opposite party or any of the officers of this court, in pursuance of the laws of this State.

May 23rd, 1861.

R. BERGSTRESSER.

Filed May 23rd, 1861. G. H. Harlow, clerk.

And afterwards, to wit, on the 23rd day of May, A. D. 1861, a writ was issued in words and figures following, to wit:

419 In the name of the people of the State of Illinois.

STATE OF ILLINOIS,
Tazewell County, ss:

To the sheriff of said county, greeting:

We command you that you summon Illinois River Railroad Company, if they shall be found in your county, personally to be and appear before the circuit court of said Tazewell County, on the first day of the next term thereof, to be holden at the court house in the city of Pekin, in said Tazewell County, on the first Monday of June, 1861, to answer unto Henry Swift in a plea of assumpsit, to the damage of said plaintiff, as he says, in the sum of five hundred dollars; and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness, George H. Harlow, clerk of said circuit court, and the seal thereof hereto affixed at Pekin, on this 23rd day of May, A. D. 1861.

[SEAL.] GEO. H. HARLOW, *Clerk*,
Per A. P. GRISWOLD, *Deputy*.

(Endorsed:) No. 166. Served on John S. Cook, agent for the Illinois River Railroad Company, by reading this to him May 25th, 1861. C. Williamson, sheriff, T. C.

420 (Endorsed also:) Filed in the circuit court this 25th day of May, A. D. 1861. G. H. Harlow, clerk.

And afterwards, to wit, on the 24th day of May, 1861, said plaintiff files his declaration herein as follows, to wit:

Declaration.

In circuit court. June term, 1861.

STATE OF ILLINOIS,
Tazewell County:

Henry Swift, the plaintiff in this cause, by Roberts & Ireland, his attorneys, complains the Illinois River Railroad Company, the defendant in this cause, who has been summoned to answer the plaintiff in a plea of trespass on the case upon promises: For that whereas the said defendant, by one R. S. Thomas, its president, heretofore, to wit, on the 23rd day of February, 1859, at Virginia, to wit, at Tazewell County aforesaid, according to the usage and custom of merchants, make its bill of exchange in writing bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and which said bill of exchange is in the words and figures following, to wit:

No. 292. OFFICE OF THE ILLINOIS RIVER RAILROAD CO.,
Virginia, Feb'ry 23rd, 1859.

421 Treasurer of the Ills. River Railroad Co.: Pay to J. B. Cummings or order two hundred dollars, it being for ¼ of salary, and charge the same to this company.

$200.00. R. S. THOMAS, *Pres't.*

M. H. L. SCHOOLEY, *Sec't.*

And then and there delivered the said bill of exchange to said J. B. Cummings; and plaintiff avers that afterwards, to wit, on the day and

year aforesaid, to wit, at Tazewell County aforesaid, said J. B. Cummings, by writing on the back of said bill of exchange, endorsed and delivered said bill of exchange to the said plaintiff, whereby said plaintiff became entitled to receive the said sum of money in said bill of exchange specified according to the tenor and effect thereof; and plaintiff aver that said bill of exchange was afterwards, to wit, on the day and year aforesaid, to wit, at Tazewell County aforesaid, duly presented to the treasurer of said Illinois River Railroad Company, and payment thereof duly demanded; but plaintiff avers that said treasurer of said Illinois River Railroad Company wholly refused to pay said sum of money in said bill of exchange specified, or any part thereof, to the said plaintiff; and hath continually refused so to do, by means whereof said defendant became liable to pay said plaintiff said sum of money in said bill of exchange specified, according to the tenor
422 and effect thereof: and being so liable, the said defendant in consideration thereof undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money in said bill of exchange specified, according to the tenor and effect thereof: yet the said plaintiff in fact saith that the said defendant did not nor would, although often requested so to do, pay the said plaintiff the said sum of money in said bill of exchange specified, or any part, but hath hitherto wholly refused and still doth refuse, to wit, at Tazewell County aforesaid.

And whereas, also, the said defendant afterwards, to wit, on the day and year aforesaid, to wit, at Tazewell County aforesaid, was indebted to the said plaintiff in the sum of five hundred dollars, for money before that time lent and advanced by the said plaintiff to the said defendant, at the special request of the said defendant; and in the further sum of five hundred dollars for money before that time had and received by the defendant to and for the use of the plaintiff; and in the further sum of five hundred dollars for money before that time found
423 to be due and owing from the defendant to said plaintiff, upon an account then and there stated between them; and, being so indebted, said defendant in consideration thereof afterwards, to wit, on the day and year last aforesaid, to wit, at Tazewell County aforesaid, undertook and then and there faithfully promised the plaintiff to pay him the said several last mentioned sum of money when said defendant should be thereunto requested.

Nevertheless, the said defendant, not regarding its said promises and undertakings, but contriving and fraudulently intending to deceive the said plaintiff, hath not as yet paid said several above mentioned sums of money or any them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff hath hitherto wholly refused, and still doth refuse, to plaintiffs' damages of five hundred dollars; wherefore he sues, &c.

ROBERTS & IRELAND,
Att'ys for Plaintiffs.

Copy of bill sued on.

No. 292.] OFFICE OF THE ILLINOIS RIVER RAILROAD CO.,
Virginia, Febr'y 23rd, 1859.

424 Treasurer of the Illinois River R. R. Company: Pay to J. B. Cummings or order two hundred dollars, it being for ¾ of salary, and charge the same to this company.
$200.00.

R. S. THOMAS, *Pres't.*

M. H. L. SCHOOLEY, *Sect.*

On the back of said bill is the following endorsement:
Pay Henry Swift.

J. B. CUMMINGS.

Filed May 24th, 1861.

G. H. HARLOW, *Clerk.*

And afterwards, to wit, on the 4th day of June, 1861, being one of the days of the June term, 1861, of the circuit court of said Tazewell County, the following proceedings were had of record herein, to wit:

HENRY SWIFT
vs. } 166. Assumpsit.
ILLINOIS RIVER R. R. CO.

This cause is ordered to be continued till the next term in course.

And afterwards, to wit, on the 3rd day of September, 1861, said plaintiff files his note as follows, to wit:

Note.

No. 292. OFFICE OF THE ILLINOIS RIVER R. R. CO.,
Virginia, Febr'y 23rd, 1859.

425 Treasurer of the Illinois River R. R. Company pay to J. B. Cummings or order two hundred dollars, it being for ¼ of salary, and charge the same to this company.
$200.00.

R. S. THOMAS,
Pres't.

M. H. L. SCHOOLEY, *Sec't.*

(Endorsed:) Pay Henry Swift.

J. B. CUMMINGS.

Filed Sept. 3rd, 1861.

G. H. HARLOW,
Clerk.

And on said same day the defendant files his plea as follows, to wit:

Plea.

Of the September term, 1861, of the Tazewell circuit court.

HENRY SWIFT
vs. }
ILLS. R. R. R. CO.

And the said defendants, by Prettyman, their attorney, comes & defends the wrong and injury made, and says actio non, because they say they did not undertake and promise in manner and form as the said plaintiff hath above alleged, and of this they put themselves upon the country.
Plaintiff doth the like, &c.

PRETTYMAN,
For Def't.
ROBERTS.

And for a further plea in this behalf the said defendant say actio non, because they say that they have fully paid to the said
426 J. B. Cummings all the said sum of money for the services in the said bill sued on named, and this they are ready to verify.
Wherefore they pray judgment, &c.
The plaintiff doth the like.

B. S. PRETTYMAN,
For Def'ts.

And for further plea in this behalf said defendant say actio non, because they say that the said R. S. Thomas had not at the time when, &c., authority to draw the said bill in said plaintiff's declaration named, and of this they put themselves upon the country, and plaintiff

B. S. PRETTYMAN,
For Def't.

And for further plea on this behalf said defendant say actio non, because they say that the said bill was not presented to the treasurer of the said company in manner and form as the same is alleged, and of this they put themselves upon the country, and plaintiff doth the like.

PRETTYMAN,
For Def't.
ROBERTS.

And for further plea on this behalf said defendant say actio non, because they say the said bill of exchange sued upon was executed without any good and valuable consideration, and this they are ready
427 to verify. Wherefore they pray judgment, &c., and plaintiff doth the like, &c.

PRETTYMAN,
For Def'ts.

Filed Sept. 31, 1861.

G. H. HARLOW, *Clerk.*

And afterward, to wit, on the 3rd day of September, 1861, being 2nd day regular September term, 1861, of circuit court of said county, the following further proceedings were had of record herein, to wit:

HENRY SWIFT
vs. } 58. Assumpsit.
ILLINOIS RIVER RAILROAD COMPANY.

Now comes as well the plaintiff by his attorneys, Roberts & Ireland, and said defendants by their attorney, Prettyman, and a jury being waived by consent, this cause is tried by the court, and the court, having heard the allegations and proofs of parties and arguments of counsel thereon, is of opinion that the plaintiff hath sustained damages in the sum of two hundred dollars ($200).

It is therefore ordered and adjudged by the court that the plaintiff have and recover of the said defendants the damages aforesaid in form aforesaid found, likewise the costs and charges by him about this suit expended, and that execution issue therefor.

428 And that afterward, to wit, on the day of the date thereof, execution was issued, the following of which is a copy thereof, with the endorsement & return thereon, to wit:

STATE OF ILLINOIS,
Tazewell County, ss:

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that of the goods, chattels, lands, and tenements of the Illinois River Railroad Company, to be found in your county, you cause to be made the sum of two hundred dollars damage and six & $\frac{10}{100}$ dollars costs, which on the 3rd day of September, A. D. 1861, in our circuit court for said Tazewell County, Henry Swift recovered against the said Illinois River Railroad Company. And have you that money, damage, and interest thereon from the said 3rd day of September, 1861, ready in ninety days from the date hereof to render the said Henry Swift. And you hereof make due return with an endorsement of the manner in which you shall have executed the same.

Witness George H. Harlow, clerk, and the seal of said court, at Pekin, this 14th day of September, A. D. 1861.

[SEAL.]

GEORGE H. HARLOW,
Clerk Circuit Court,
Per A. P. GRISWOLD,
Deputy.

429 Tazewell circuit court. September term, A. D. 1861.

HENRY SWIFT
vs.
ILL'S RIVER R. R. Co.

Pl'ff's costs.

Fil'g, 10; doc'g, 20; taking bond for cost and fil'g, 15; issu'g 2 summ's and fil'g, 80; ent'g app' pl't'ff and att'y, 15; motion and order jury waived, 40; order try by court, 20; ent'g, doc'g, and record'g judg't, 50; order ex'er, 20; issuing ex'er, doc'g, ; fil'g and return, 65; sat's judg't, 15; doc'g fee bill, 30; copy, 20; certificate and seal, 35.

Def't's costs.

Fil'g, 5; ent. appa., 10; dock. fee and copy, 50, cert. & seal, 35; Sheriff Williamson on summons, 75. Total, $6.10.

I, George H. Harlow, clerk of the circuit court within and for said county, do certify that the foregoing is a true copy of my fee book.

Attest:

GEORGE H. HARLOW,
Clerk Circuit Court.

(Endorsed:) Came to hand Sept. 18th, 1861, at 9 o'clock a. m.
C. WILLIAMSON, *S. T. C.*

I return this execution, no preperty found or money made November 29th, 1861.

C. WILLIAMSON, *S. T. C.*

Fees, 60c.

(Also endorsed:) Filed November 29th, A. D. 1861. George H. Harow, clerk. No. 5317.

430 STATE OF ILLINOIS,
Tazewell County, ss:

I, W. P. Allensworth, clerk of the circuit court in and for said county, in said State, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record of all proceedings and of all the papers upon the files of our circuit court in a certain cause lately pending therein, on the common law side thereof, wherein Henry Swift was plaintiff and Illinois River Railroad Company was defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at office in Pekin on this 16th day of Nov., 1872.

[SEAL.] W. P. ALLENSWORTH, *Clerk.*
T. H. HATCH, *Deputy.*

(Endorsed:) Filed September 14th, 1876. J. A. Jones, clerk.

431 EXHIBIT K.

In circuit court, February term, 1863.

UNITED STATES OF AMERICA,
State of Illinois, Tazewell County, ss:

Pleas before the honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Tazewell County, in the State aforesaid, and at a term thereof begun and held at the court-house in the city of Pekin, in said county, on the first Monday, being the 2nd day of February, in the year of our Lord one thousand eight hundred and sixty-three.

Present, honorable James Harriott, judge of the 21st judicial circuit of the State of Ills.; George H. Harlow, clerk; Abraham Bergen, State's attorney; James S. Hawkins, sheriff.

Attest:

GEORGE H. HARLOW, *Clerk.*

IN THE MATTER OF STEPHEN RONEY, PLAINTIFF,
vs.
THE ILLINOIS RIVER RAILROAD COMPANY, defendant. } In assumpsit.

Be it remembered that heretofore, to wit, on the 13th day of August, A. D. 1862, came the above-named plaintiff, by C. A. Roberts, attorney, and filed his præcipe as follows, to wit:

432 *Præ.*

In the circuit court, September term, A. D. 1862.

STATE OF ILLINOIS,
Tazewell County, ss:

STEPHEN RONEY
vs.
THE ILLINOIS RIVER RAILROAD COMPANY. } Assumpsit. Damages, $350.

The clerk will please issue process in the above cause to the sheriff of Tazewell County, returnable as the law directs.

Oblige,

C. A. ROBERTS, *Pl'ff's Att'y.*

Filed August 13th, 1862.

GEO. H. HARLOW, *Clerk.*

And thereupon there was issued a writ, the following of which is a copy of the same, with endorsements thereon, to wit:

Writ.

STATE OF ILLINOIS,
Tazewell County, ss:

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that you summon The Illinois River Railroad Company, if they shall be found in your county, personally to be and appear before the circuit court of said Tazewell County on the first day of the next term thereof to be holden at the court-house in Pekin, in said Tazewell County, on the first Monday of September, 1862, to answer
433 unto Stephen Roney in a plea of assumpsit to the damage of said plaintiff, as he say', in the sum of three hundred and fifty dollars.

And you have then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness George H. Harlow, clerk of our said court, and the seal thereof, at Pekin aforesaid, this 13th day of August, A. D. 1862.

[COURT SEAL.] GEORGE H. HARLOW,
Clerk.

(Endorsed:)

This summons has been duly served by reading to John S. Cook, the agent, and J. B. Clark, superintendent, of the Illinois River Railroad Company.

August the 22nd, 1862.

C. WILLIAMSON, *Sh'ff T. C.*,
By WM. GAITHER, *Deputy.*

Service, 1.00; travel, 10; return, 10—$1.20.

Filed in the circuit court this 22d day August, A. D. 1862.
G. H. HARLOW, *Clerk.*

And afterwards, to wit, on the 22d day of August, A. D. 1862, the said plaintiff filed his declaration as follows, to wit:

434 In the circuit court of Tazewell County, of the September term, A. D. 1862.

STATE OF ILLINOIS,
Tazewell County, ss:

Stephen Roney, plaintiff in this suit, by C. A. Roberts, attorney, complains of the Illinois River Railroad Company, the defendant, who has summoned, etc., in a plea of trespass on the case on promises: For that whereas the said defendant heretofore, to wit, on the 12th day of February, in the year of our Lord one thousand eight hundred and sixty-one, at Pekin, to wit, at Pekin, in said county of Tazewell, made its certain promissory note, and then and there delivered the same to said plaintiff, Stephen Roney, in and by which said note said defendant, by the name, style, and description of Illinois River Railroad Company (per R. S. Thomas, its president), declared to be due the said plaintiff the sum of one hundred and seventy six $\frac{15}{100}$ dollars, with ten per cent. interest from date, for value received; by means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said

note, and being so liable, in consideration, thereof, then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect, true intnet and meaning, of the said note, to wit, at the place aforesaid.

435 And whereas, also, the said defendant afterward, to wit, on the 1st day of August, in the year of our Lord one thousand eight hundred and sixty-two, to wit, at Pekin, in said county, became and was indebted unto the plaintiff in a large sum of money, to wit, three hundred and fifty dollars, for money before that time lent and advanced to, and paid, laid out, and expended for said defendant by said plaintiff at said defendant' request; and for money before that time had and received by said defendant to and for the use of said plaintiff; and also in like sums for goods, wares, and merchandise before that time sold and delivered by said plaintiff to said defendant at like special instance and request; and also in like sum for the labor, care, dilligence, of said plaintiff, before that time done and performed by said plaintiff for said defendant, and at the like instance and request of said defendant; and also in like sum then and there found due and owing said plaintiff on an account stated between them; and being so indebted, said defendant, in consideration thereof, then and there undertook and promised to pay said plaintiff said several sums of money above mentioned when thereunto afterwards requested.

Yet the defendant, not regarding its said promises and undertakings, but contriving, &c., although often requested so to do, has not

436 paid said plaintiff either of said sums of money above mentioned, or any part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said plaintiff of three hundred and fifty dollars, and therefore he brings this suit, etc.

C. A. ROBERTS,
Pl'ff' Att'y.

Copy of instrument sued upon.

PEKIN, *Feb'ry 12th*, 1861.

Due Stephen Roney the sum of one hundred and seventy-six $\frac{15}{100}$ dollars, with ten per cent. interest from date, for value received.

ILLINOIS RIVER RAILROAD COMPANY,
Per R. S. THOMAS, *its President.*

Illinois River Railroad Company to Stephen Roney, Dr.

To money lent and advanced	$350 00
To money expended and paid out for	$350 00
To money received for use of	$350 00
To goods, wares, and merchandise	$350 00
To labor and services	$350 00
To balance on account stated	$350 00

(Endorsed:) Filed 22d day of August, 1862. Geo. H. Harlow, clerk.

437 And afterwards, to wit, on the 8th day of September, A. D. 1862, being 7th day regular September term, A. D. 1862, of circuit court of Tazewell County, the following proceedings were had of record in said county, to wit:

STEPHEN RONEY
vs.
ILLINOIS RIVER R. R. CO. } Assumpsit.

This cause is ordered to be continued with alias process.

And afterwards, to wit, on the 24th day of September, A. D. 1862, there was issued on alias writ as follows, to wit:

STATE OF ILLINOIS,
Tazewell County, ss:

In the name of the people of the State of Illinois to the sheriff of said county, greeting:

We command you that you summon the Illinois River Railroad Company, if they shall be found in your county, personally to be and appear before the circuit court of said Tazewell County, on the first day of the next term thereof, to be holden at the court house, in the city of Pekin, in said Tazewell County, on the first Monday of February,
438 1863, to answer unto Stephen Roney in a plea of assumpsit to the damage of said plaintiff, as he say', in the sum of three hundred and fifty dollars, and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness George H. Harlow, clerk of said circuit court, and the seal thereof hereto affixed at Pekin, on this 24th day of September, A. D. 1862.

[L. S.] GEORGE H. HARLOW, *Clerk*,
Per A. P. GRISWOLD, *Deputy*.

(Endorsed:)

This writ has been duly served by reading to John S. Cook, agent, and to J. B. Clark, superintendent, of the Illinois River Railroad Company, and by delivering to each of them a true copy of the same, the president of said Illinois River Railroad Company not being found in this county. September 27th, 1862.

C. WILLLIAMSON,
Sheriff T. C.
By WM. GAITHER, *Deputy*.

(Also endorsed:) Filed in the circuit court this 3rd day of October, A. D. 1862. Geo. H. Harlow, cl'k.

And afterwards, to wit, on the 29th day of December, A. D. 1862, a certain other writ was issued as follows, to wit:

STATE OF ILLINOIS,
Tazewell County, ss:

In the name of the people of the State of Illinois. To the sheriff of Cook County, greeting:

We command you that you summon the Illinois River Railroad
439 Company, if they shall be found in your county, personally to be and appear before the circuit court of said Tazewell County, on the first day of the next term thereof, to be holden at the court house in the city of Pekin is said Tazewell County, on the first Monday in Feb'ry, 1863, to answer unto Stephen Rosney in a plea of assumpt'sit, to the

damage of said plaintiff as he says in the sum of three hundred dollars. And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness George H. Harlow, clerk of said circuit court, and the seal thereof hereto affixed at Pekin, on this 29th day of December, A. D. 1862.

[L. S.] GEO. H. HARLOW, *Clerk.*
Per A. P. GRISWOLD, *Deputy.*

(Endorsed:)

The within named Illinois River Railroad Company not found in my county this 23d day of January, 1863.

DAVID S. HAMMOND,
Sheriff,
By S. HARDING, *Dep'ty.*

[50 ct. U. S. rev. stamp.]

And afterward, to wit, on the 23d day of January, A. D. 1863, a certain other writ was issued as follows, to wit:

STATE OF ILLINOIS,
Tazewell County, ss:

In the name of the people of the State of Illinois, to the sheriff of said county, greeting:

We command you that you summon the Illinois River Railroad
440 Company if they shall be found in your county, personally to be and appear before the circuit court of said Tazewell County, on the first day of the next term thereof, to be holden at the court house, in the city of Pekin, in said Tazewell County, on the first Monday of February, 1863, to answer unto Stephen Roney, in a pleas of assumpsit to the damage of said plaintiff as he says in the sum of three hundred and fifty dollars; and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness Geo. H. Harlow, clerk of said circuit court, and the seal thereof hereto affixed, at Pekin, on this 23rd day of January, A. D. 1863.

[SEAL.] GEORGE H. HARLOW, *Clerk.*
Per A. P. GRISWOLD, *Deputy.*

(Endorsed:)

Served the within writ by reading and delivering a true copy thereof to Benjamin S. Prettyman, vice-president of the Illinois River Railroad Company this the 23d day of January, A. D. 1863.

JAMES S. HAWKINS,
Sheriff T. C.,
JAMES MILNER, *Deputy.*

(Also endorsed:) Filed in the circuit court this 30th day of January, A. D. 1863. Geo. H. Harlow, clerk.

[50 cts. U. S. rev. stamp.]

And afterwards, to wit, on the 21st day of February, 1863, said plaintiff files his certain due bill as follows, to wit:

Due bill.

PEKIN, *Feb'ry 2d*, 1861.

441 Due Stephen Roney the sum of one hundred and seventy-six $\frac{15}{100}$ dollars, with ten per cent. interest from date, for value received.

ILLINOIS RIVER RAILROAD COMPANY,
Per R. S. THOMAS, *Its President.*

Filed Febr'y 2, 1873.

GEO. H. HARLOW, *Clerk.*

And afterward, to wit, on the 2d day of February, A. D. 1863, being 1st day of the February term, A. D. 1863, of circuit court of said county, the following proceedings were had of record herein, to wit:

STEPHEN RONEY
vs.
THE ILLINOIS RIVER RAILROAD COMPANY. } 66. Assumpsit.

Now comes the plaintiff, by C. A. Roberts, his attorney, and the defendants, having been regularly served with process, were three times solemnly called, came not, but made default. It is therefore considered by the court, that the plaintiff hath sustained damages by reason of the breaches of promise in the declaration mentioned, but because those damages are unknown to the court, the clerk is ordered to make an assessment thereof, and he having assessed those damages to the sum of two hundred and ten $\frac{88}{100}$ ($210.88) dollars, and made report thereof which is approved by the court,

442 It is therefore ordered and adjudged by the court that the plaintiff have and recover of the said defendants the damages aforesaid, in form aforesaid assessed, likewise the costs and charges by him about his suit expended, and that execution issue therefor.

And thereafter, to wit, on the 10th day of March, A. D. 1863, execution was issued, the following of which is a true copy of the same with endorsements thereon, to wit:

STATE OF ILLINOIS,
Tazewell County, ss:

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that of the goods, chattels, lands, and tenements of the Illinois River Railroad Company, to be found in your county, your cause to be made the sum of two hundred and ten & $\frac{88}{100}$ dollars damage, and ten & $\frac{50}{100}$ dollars costs, which, on the 2d day of February, A. D. 1863, in our circuit court for said Tazewell County, Stephen Roney recovered against the said Illinois River Railway Company, and have you that money, damage, and interest thereon from the said 2d day of February, 1863, ready in ninety days from the date hereof to render the said Stephen Roney, and you hereof make due return, with an

443 endorsement of the manner in which you shall have executed the same.

Witness George H. Harlow, clerk, and the seal of said court, at Pekin, this 10th day of March, A. D. 1863.

[L. S.]

GEO. H. HARLOW,
Clerk Circuit Court.

Tazewell circuit court, Febr'y term, A. D. 1863.

S. RONEY
vs.
ILLS. RIVER R. R. CO.

Fil'g, 15; doc'g, 20; tak'g bonds for costs, and fil'g, ; issu'g 4 summ's and fil'g, 1.60	1 95
Ent'g app. pl't'ff and att'y, 15; motion and order, call def't, 40; order default, 20	75
Motion and order, judg't, 40; motion and order, clerk assess, 40; ass'g damages, 10; report, 10	1 00
Order approval, 20; ent'g, doc'g, and record'g judg't, 50; order ex'n, 20; issuing ex'n, doc'g	90
Fil'g and return, 65; sat's. judg't, 15; doc'g fee bill, 30; copy, 20; certificate and seal, 35	1 65
	$6 25
Sh'ff Williamson on sum's	3 40
" Hawkins " "	1 15
	$10 80

I, George H. Harlow, clerk of the circuit court within and for said county, do certify that the foregoing is a true copy of my fee-book.

Attest:

G. H. HARLOW,
Clerk Circuit Court.

(Endorsed:) This execution came to hand this 11th day of March, 1863, at 9 o'clock a. m. James S. Hawkins, sheriff T. C. No property to be found.

May 29, 1863.

JAMES S. HAWKINS,
Sheriff T. C.

444 (Also endorsed:) Filed May 29, A. D. 1863. No. 5723. Geo. H. Harlow, clerk.

STATE OF ILLINOIS,
Tazewell County, ss:

I, W. P. Allensworth, clerk of the circuit court in and for said county, in said State, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record of all proceedings, and of all the papers upon the files of our circuit court, in a certain cause lately pending therein on the common law side thereof, wherein Stephen Roney is plaintiff and the Illinois River Railroad Company is defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at office in Pekin, on this 15th day of November, 1872.

[SEAL.]

W. P. ALLENSWORTH, *Clerk.*
T. H. HATCH, *Deputy.*

(Endorsed:) Exhibit K. Henry Stryker, jr., special com'r.

(Also endorsed:) Filed Sept. 14, 1876. J. A. Jones, clerk.

445 EXHIBIT L.

In circuit court, Oct. term, A. D. 1872.

UNITED STATES OF AMERICA,
State of Illinois, Mason County, ss:

Pleas before the honorable James Harriott, judge of the twenty-first judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Mason County, in the said State aforesaid, and at a term thereof begun and held at the court-house, in the town of Havana, in said county, on the fourth Monday (being the twenty-second day) of October, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the said United States the ninety-first.

Present, honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois; C. A. Roberts, State's attorney; L. M. Hillyer, sheriff.

Attest:

JNO. H. HAVIGHORST, *Clerk.*

Whereas, to wit, on the thirtieth day of August, A. D. 1866, the following praecipe for summons was filed in a certain cause wherein Harvey O'Neal, Isaac Vail, Benjamin H. Gatton, Richard P. Gatton, and Benjamin Beesley were plaintiffs, and the Illinois River Railroad Company was defendant, in the words and figures following, to wit:

446 Of the October term, A. D. 1866, of the Mason County circuit court.

STATE OF ILLINOIS,
Mason County, ss:

HARVEY O'NEAL, ISAAC VAIL, BENJAMIN H. GATTON, RICHARD P. GATTON, & BENJAMIN BEESLEY	Assumpsit. Damages.
vs.	
ILLINOIS RIVER RAILROAD CO.	

Mr. Clerk of the Mason County circuit court:

You will please issue process in assum'sit in the above-entitled suit, directed to the sheriff of Mason County, and returnable to the next term of Mason circuit court. Damages five thousand dollars.

HENRY E. DUMMER,
Attorney for Pl'ffs.

Afterwards, to wit, on the same day, the following summons was issued in the above-entitled cause, in words and figures following, to wit:

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff of Mason County, greeting:

We command you that you summon Illinois River Railroad Company, if found in your county, personally to be and appear before the circuit court for said county on the first day of the next term thereof to be

holden at the court-house in Havana, in said county, on the fourth Monday of October next, to answer unto Harvey O'Neal, Isaac Vail,
447 Benjamin H. Gatton, Richard P. Gatton, and Benjamin Beesley, of a plea of assumpsit to the damage of said plaintiff' as they say, in the sum of five thousand dollars; and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness John H. Havighorst, clerk of said court, and the seal thereof at Havana in said county this 30th day of Aug. A. D. 1866.

[SEAL.] JNO. H. HAVIGHORST, *Clerk.*
Per W. E. KNOX, *Deputy Clerk.*

[50 U. S. stamp, 50.]

On the back of said summons appears the following return:

STATE OF ILLINOIS,
Mason County, ss:

I hereby certify that I cannot within my county find the within named Ill's R. R. R. Co., this 13 day of Oct. 1866.

L. V. HILLYER,
Sheriff.

Filed on the eighteenth day of October, A. D. 1868.

Afterward, to wit, on the 24th day of September, 1866, the following declaration was filed in words and figures following, to wit:

Of the October term, A. D. 1866, of the Mason County circuit court.

STATE OF ILLINOIS,
Mason County:

448 HARVEY O'NEAL, ISAAC VAIL, BENJAMIN H. GATTON, RICHARD P. GATTON, & BENJAMIN BEESLEY, plaintiffs,
vs.
ILLINOIS RIVER RAILROAD COMPANY, DEFENDANTS.

Assumpsit. Damages, $5,000.00.

Harvey O'Neal, Isaac Vail, Benjamin H. Gatton, Richard P. Gatton, Benjamin Beesley, complain of Illinois River Railroad Company, summoned, &c., in a plea of trespass on the case on promises, for that whereas heretofore, to wit, on the first day of August, in the year of our Lord eighteen hundred and fifty-nine, to wit, at the said county of Mason the said defendant executed and delivered to the said plaintiffs their promissory note, which is in words and figures following, to wit:

$5,000.00.]

Six months after date the Illinois Railroad Company promise to pay to Harvey O'Neal, Isaac Vail, Benjamin H. Gatton, Richard P. Gatton, and Benjamin Beesley (in consideration of that much money advanced to purchase ties for said company) the sum of five thousand dollars with twenty-five per cent. interest per annum from date.

(Signed) ILLINOIS RIVER RAILROAD COMPANY,
By R. S. THOMAS, *Its President.*

449 By means whereof the said defendant then and there became liable to pay to the said plaintiffs the said sum of money in said note specified according to its tenor and effect, and being so liable the said defendant in consideration thereof afterwards, to wit, on the day and year aforesaid of the said county of Mason undertook then and there faithfully promised the said plaintiff to pay them the said sum of money in said note specified according to its tenor and effect; yet though often requested the said defendants have not paid the said sum of money in said note specified nor any part of the same, but the same to do have hitherto wholly neglected and refused and still neglect & refuse, to the damage of said plaintiffs the sum of five thousand dollars, & therefore they sue, &c.

H. E. DUMMER,
Attorney, f. g.

Afterwards, to wit, on the twenty-second day of November, it being the 16th day of the October term, A. D. 1866, the following order was made in the above entitled cause in the words & figures following, to wit:

450 H. O'NEAL ET AL.
vs. } Assumpsit.
ILLINOIS RIVER RAILROAD CO.

This day come the said plaintiffs by Henry E. Dummer, their attorney, and the said defendants having been duly served with process and being three times solemnly called come not nor comes any one for them, but wholly make default herein.

It is therefore considered and ordered by the court that said plaintiff have judgment by default against the said defendants for their damages herein.

And it appearing to the court that this suit is brought upon an instrument of writing for the payment of money only, and that the damages of said plaintiff in this case rest in computation, it is therefore ordered by the court that the clerk assess, compute, and report the said damages. Whereupon the clerk proceeded to make the assessment and computation aforesaid and reported to the court the sum of $3,560.00 (thirty-five hundred and sixty dollars $\frac{00}{000}$) as the amount of the plaintiffs' damages herein, which assessment and computation, upon examination by the court, appearing to be just and correct, is by the court ap-
451 proved and allowed. It is therefore considered and ordered by the court that the said plaintiff have and recover of the said defendant the said sum of $3,560.00 (thirty-five hundred and sixty $\frac{00}{000}$ dollars), being the amount of the damages assessed and computed as aforesaid, together with their costs and charges herein expended, and that they have execution therefor against the said defendant.

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff of Mason County, greeting:

We command you that of the goods and chattels, lands and tenements of the Illinois River Railroad Company, defendants, in your county, your cause to be made the sum of three thousand five hundred and sixty dollars and $\frac{00}{000}$c'ts, which Harvey O'Neal, Isaac Vail, Benjamin

H. Gatton, Richard P. Gatton, and Benjamin Beesley, plaintiffs, lately in the circuit court of said Mason County, at a term thereof begun and held at Havana, in said Mason County, on the fourth Monday of October, A. D. 1866, recovered against the said defendants, and which by the said court was adjudged to the said plaintiffs in a certain action of assumpsit, and also the further sum of nine dollars and 15 cents,
452 which were adjudged to the plaintiffs for costs and charges in that behalf expended, whereof the said defendants stand convicted as appears to us of record, and have you these moneys ready to render to the said plaintiffs for damage and costs aforesaid, and make return of this writ with an endorsement thereon in what manner you shall have executed the same in ninety days from the date hereof.

Witness John H. Havighorst, clerk of said court, and the seal thereof, at Havana, in said county, this 7th day of February, A. D. 1867.

[SEAL.] JNO. H. HAVIGHORST, *Clerk*,
Per W. E. KNOX, *Deputy Clerk*.

And on the back of said execution appears the following return:

I return this execution in no part satisfied, no property of the Illinois River Railroad Company being found in any county.
March 6th, 1867.

JAS. L. HASTINGS,
Sheriff.

Fee-book F, page 348.

In the circuit court, October term, A. D. 1866.

STATE OF ILLINOIS,
Mason County, ss:

453 IN THE MATTER OF HARVEY O'NEAL et al. *vs.* ILL'S RIV. R. R. COMPANY. } Assumpsit.

Plaintiffs' costs.

Clerk's fees:—Appearance and attorney, 15c.; docketing suit, 20c.; filing pre. and narr., 20c.; bond for costs and filing, ; filing note, 10c.; summons and filing, 60c.; entering default, 25c.; order for judgment, 25c.; order for clerk to assess, 25c.; order to report, 25c.; assessing and reporting, 50c.; order confirming, 25c.; order for damages, 25c.; order for costs, 25c.; docketing judgment, 25c.; order for execution, 25c.; execution, 50c.; filing and docketing, 25c.; order taxing costs, 25c.; bill of costs, 50c.; copying do., c.; certificate and seal, 35c.; entering sheriff's return, 15c.; satisfaction of judgment, 25c.; filing prec. for ex., 10c.; satisfaction costs, 10c.; index, 60c.; pl'f' id. 25 ord. c., 25; total, 7.55. Docket fee, 1.00; stamp, 50c.; 1.50; Hillyer, sheriff's fees:—Returning summons, ; mileage, miles, 10; 1.60—$9.15.

Defendants' costs.

Ent. & fil. app. att'y, &c., 25c., B. C., &c., 50; s'fa., 10; iss. & fil. s'b., 60; d'k't & ent. ret., 30; ctf. & sl. 35—$2.15.

I, Jno. H. Havighorst, clerk of the circuit court of the said county of Mason, do hereby certify that the above is a true copy from
454 my fee-book of plaintiffs' costs, & also of defendant's costs.
Given under my hand and the seal of said court.
[SEAL.] JNO. H. HAVIGHORST, *Clerk.*

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff of Mason County, greeting:

We command you that if the above fee-bill, amounting to two dollars and ten cents, shall not be paid within thirty days after being by you demanded, you cause the same to be levied on the goods and chattels, lands and tenements of the said Illinois River Railroad Company, in your county, according to the statute in such case made and provided, and make return of this writ within ninety days, as the law directs, with an endorsement hereon in what manner you have executed the same.

Witness Jno. H. Havighorst, clerk of the circuit court, and the seal thereof, at Havana, in said county, this 7th day of Febr'y, A. D. 1867.
[SEAL.] JNO. H. HAVIGHORST, *Clerk.*

455 Leonard Schwenk, clerk of the circuit court of Mason County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the proceedings in a certain cause then pending in said court, on the common law side thereof, wherein H. O'Neal, Isaac Vail, B. H. Gatton, R. P. Gatton, & Benj. Beesley were defendants and Illinois River Railroad Company was defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Havana, this 7th day of December, A. D. 1872.
[SEAL.] LEONARD SCHWENK, *Clerk,*
By J. K. P. BOWMAN, *Deputy Clerk.*

(Indorsed:) Exhibit L. Henry Stryker, jr., special commissioner.

(Also indorsed:) Filed Sept. 14, 1876. J. A. Jones, clerk.

456 EXHIBIT M.

Transcript of proceedings in suit.

In circuit court, October term, A. D. 1866.

UNITED STATES OF AMERICA,
State of Illinois, Mason County, ss:

Pleas before the honorable James Harriott, judge of the twenty-first judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Mason County, in the State aforesaid, and at a term thereof begun and held at the court-house, in the town of Havana, in said county, on the fourth Monday (being the twenty-second day) of

October, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the said United States the ninety-first.

Present, honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois; C. A. Roberts, State's attorney; L. M. Hillyer, sheriff.

Attest:

JNO. HAVIGHORST, *Clerk.*

Whereas, to wit, on the 9th day of October, A. D. 1866, the following precipe was filed in a certain cause wherein Benjamin Beesley was plaintiff and the Illinois River Railroad Company was defendant, in words and figures as follows, to wit:

J. H. HAVIGHORST, Esq.:

DR. SIR: I have been on the wing so much of late that I have
457 not had time to write you. I received your two letters, for which I am much obliged. 1. Please issue process on the Beesley declaration considering this a precipe. 2. I enclose declaration for suit, McKee, &c. These suits are suits which, as I understand, the defendant will not contest.

Very truly yours,

HENRY E. DUMMER.

Afterward, to wit, on the same day, the following summons was issued in the above-entitled cause in words and figures as follows, to wit:

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff of Mason County, greeting:

We command you that you summon Illinois River Railroad Company if found in your county personally to be and appear before the circuit court for said county on the first day of the next term thereof, to be holden at the court-house in Havana, in said county, on the fourth Monday of October instant, to answer unto Benjamin Beesley of a plea of assumpsit to the damage of said plaintiff as he says in the sum of four hundred dollars, and have you then and there this writ, with an endors'ment thereon in what manner you shall have executed the same.

Witness, John H. Havighorst, clerk of said court and the seal thereof, at Havana, in said county, this 9th day of October, A. D. 1866.

[L. S.] JNO. H. HAVIGHORST, *Clerk,*
Per W. E. KNOX, *Deputy Cl'k.*

[Rev. stamp 50c., cancelled.]

458 On the back of said summons appears the following return:

STATE OF ILLINOIS,
Mason County, ss:

I hereby certify that I cannot within my county find the within named Ill. R. R. Co., this 13th day of October, 1866.

L. M. HILLYER,
Sheriff.

Filed on the 18th day of October, A. D. 1866.

Afterwards, to wit, on the 24th day of September, A. D. 1866, the following declaration was filed in the above entitled cause in words, figures following, to wit:

Of the October term, A. D. 1866, of the Mason circuit court.

STATE OF ILLINOIS,
Mason County, ss:

BENJAMIN BEESLEY, PLAINTIFF,
vs.
ILLINOIS RIVER RAILROAD COMPANY, DEFENDANT. } Assumpsit. Damages, $400.00.

Benjamin Beesley, plaintiff, complains of Illinois River Railroad Company, summoned, &c., in a plea of trespass on the case on promises; for that whereas the said defendant heretofore, to wit, on the first day of September, in the year of our Lord eighteen hundred and sixty-six, at the said county of Mason, was indebted to the said plaintiff in the
459 sum of three hundred and eighteen dollars, for work and labor done and performed by the said plaintiff, and for his personal services rendered in about the business of the defendant, at the said defendant's special instance and request, and for interest on money loaned by said plaintiff to the said defendant, special instance and request, and being so indebted the said defendant in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the said *said* county of Mason, undertook and then and there faithfully promised the said plaintiff to pay him the said sum when he should be thereunto afterwards requested; yet, though often requested, the said defendant has not paid the said sum of money in the foregoing declaration mentioned nor any part thereof, but the same to do has hitherto wholly neglected & refused, and still neglects and refuses, to the damage of said plaintiff four hundred dollars, & therefore he sues, &c.

HENRY E. DUMMER,
Att'y pr. Q.

The account sued on is filed with this declaration.

H. E. D.

Account sued on in lease of Benjamin Beesley against the Illinois River R. R. Company.

Illinois River R. R. Company to Benjamin Beesley, Dr.

460 To receiving and counting and receipting for R. road ties and iron, for the Illinois River Railroad as agent for said *for said* R. railroad commencing July first, 1859, to Nov. 30th, 1859, making five months at sixty dollars p'r month .. $300 00
To interest on eight hundred from July 9th to Aug. 2d, 1859.... $10 00
To two trips from Bath to Havana, to collect coupons from G. N. Walker..... $8 00

$318 00

Afterward, to wit, on the 23d day of November, A. D. 1866, it being the seventeenth day of the October term of said circuit court, the following orders were made and entered of record in said cause, to wit:

BENJ'N BEESLEY
vs.
ILLINOIS RIVER R. R. CO. } No. 87. Assumpsit.

Now, on this day comes the plaintiff by H. E. Dummer, his attorney, and it appearing to the court that said defendants are duly in court by their appearance being entered herein by Benj'n S. Prettyman, their vice-president and attorney, and they being called, come not nor comes any one for them, but make default, and the court having heard the evidence doth order that plaintiff have and recover of the said
461 defendants the sum of three hundred and fifty & $\frac{88}{100}$ dollars, his damages by him in this behalf sustained, together with his costs herein expended, and that execution issue therefor.

And afterward, to wit, on the 7th day of February, A. D. 1867, the following execution was issued in the above entitled cause in words and figures following, to wit:

STATE OF ILLINOIS,
Mason County, ss:

The People of the State of Illinois to the sheriff of Mason County, greeting:

We command you that of the goods and chattels, lands and tenements of the Illinois River Railroad Company, defendants, in your county, you cause to be made the sum of three hundred and fifty dollars and eighty-eight cents, which Benjamin Beesley, lately in the circuit court of said Mason County, at a term thereof, begun and held at Havana, in said Mason County, on the fourth Monday of October, A. D. 1866, recovered against the said defendant, and which by the said court was adjudged to the said plaintiff in a certain action of assumpsit. And also the further sum of ten dollars and ninety-five cents, which were adjudged to the plaintiff for costs and charges in that behalf expended, whereof the said defendants stand convicted, as appears to us of record,
462 and have you these moneys ready to render to the said plaintiff for damages and costs aforesaid, and make return of this writ, with an endorsement thereon in what manner you shall have executed same, in ninety days from the date thereof.

Witness John H. Havighorst, clerk of said court, and the seal thereof, at Havana, in said county, this 7th day of February, A. D. 1867.

[SEAL.] JOHN H. HAVIGHORST, *Clerk*,
Per W. E. KNOX, *Dept. Clerk.*

On the back of said execution appears the following endorsement:

I return this execution in no part satisfied, no property of the Illinois River Railroad Company, the defendant, being found in my county.
March 6th, 1867.

JAS. L. HASTINGS.

Filed March 6th, 1867.

I, Leonard Selwenk, clerk of the circuit court of Mason County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the proceedings in a certain cause then pending in said court on the common law side thereof, wherein Benjamin Beesley was plaintiff, and Illinois River Railroad Company was defendant.

463 In witness whereof I have hereunto set my hand and affixed the seal of said court, at Havana, this 9th day of December, A. D. 1872.

[L. S.] LEONARD SCHWENK,
Clerk,
By J. K. P. BOWMAN,
Dep'y Cl'k.

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, cl'k.

In circuit court, October term, A. D. 1866.

UNITED STATES OF AMERICA,
State of Illinois, Mason County, ss:

EXHIBIT N.

Pleas before the honorable James Harriott, judge of the twenty-first judicial circuit of the State of Illinois and sole presiding judge of the circuit court of Mason County in the State aforesaid, and at a term thereof begun and held at the court-house, in the town of Havana, in said county, on the fourth Monday (being the twenty-second day) of October, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the said United States the ninety-first.

Present, honorable James Harriott, judge of the judicial circuit of the State of Illinois; C. A. Roberts, State's attorney; L. M. Hillyer, sheriff.

Attest:

JNO. H. HAVIGHORST,
Clerk.

464 (No præcipe or summons on file in this cause.)

Whereas, to wit, on the 22d day of November, A. D. 1866, the following declaration was filed in a certain cause wherein Lafayette Schaffer was plaintiff, and Illinois River Railroad Company was defendant. The following declaration is in words and figures as follows, to wit:

Of the October term, A. D. 1866, of the Mason circuit court.

STATE OF ILLINOIS,
Mason County, ss:

LAFAYETTE SCHAFFER
vs.
ILLINOIS RIVER RAILROAD COMPANY. } Assumpsit. Damages, $1,000.00.

Lafayette Schaffer complains of Illinois River Railroad Company in a plea of trespass on the case on promises, for that whereas heretofore, to wit, on the first day of October, A. D. eighteen hundred and sixty-six, at the said county of Mason, the said defendant was indebted to the said plaintiff in the sum of one thousand dollars for so much money had and received by the said defendant to and for the use of the said
465 plaintiff, and in the sum of one thousand dollars for so much money paid, laid out, and expended by the said defendant, and

for the use of the said plaintiff, and at the special instance and request of the said plaintiff; and being so indebted the said defendant in consideration thereof afterwards, to wit, on the day and year aforesaid, at the said county of Mason, undertook and then and there faithfully promised to pay the said plaintiff the said sums of money when said defendant should be thereunto afterwards requested.

2ND COUNT.—Also for that whereas, the said defendant heretofore, to wit, on the 1st day of October, A. D. 1866, at the said county of Mason, was indebted to the said plaintiff in the sum of one thousand dollars for goods, wares, and merchandise, before that time sold and delivered by the said plaintiff to the said defendant, and in the further sum of one thousand dollars for services rendered by the said plaintiff to the said defendant, and in and about the business of the said defendant and at the special instance and request of defendant, and being so indebted, the said defendant in consideration thereof, afterwards, to wit, on the day and year last mentioned, at the said county of Mason, undertook
466 and faithfully promised the said plaintiff to him the said last mentioned sums of money when said defendants should be thereunto afterwards requested; yet, though often requested, the said defendant has not paid the said sums of money in the foregoing counts of this declaration mentioned, nor any part of the same, but the same to do has hitherto wholly neglected and refused, and still neglects and refuses; to the damage of plaintiff one thousand dollars, and therefore he sues, &c.

HENRY E. DUMMER,
Att'y for Plaintiff.

Illinois River Railroad Company to Lafayette Shaffer, Dr.

1ST COUNT.—To money had and received $1,000 00
" do. paid, laid out, & expended..... $1,000 00

Illinois River Railroad Company to Lafayette Schaffer, Dr.

2ND COUNT.—To goods, wares, and merchandise sold and delivered $1,000 00
To services rendered..... $1,000 00

Afterwards, to wit, on the 23d of November, A. D. 1866, it being the seventeenth day of said term of court, the following order was made and entered of record, in words & figures following, to wit:

LAFAYETTE SCHAAFFER } No. 129. Assumpsit.
vs.
ILLS. RIV. R. R. CO. }

467 This day comes the plaintiff, by H. E. Dummer, his attorney, and now also come the said defendants, by Benj'n S. Prettyman, their vice-president and attorney, who enters their appearance herein, and on motion of plaintiff's attorney it is ordered that defendants be called and ruled to answer or plead herein instanter; and they being now so called come not nor comes any one for them, but utterly make default; and the court having heard the evidence adduced and being now sufficiently advised in the premises, doth consider and order that plaintiff have and recover of the said defendants the sum of seven hundred dollars and forty-three cents, as his damages in this behalf sustained, to-

gether with his costs herein expended, and that execution issue therefor.

Afterwards, to wit, on the 7th day of February, A. D. 1867, the following execution was issued in the above-entitled cause, in words and figures following, to wit:

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff of Mason County, greeting:

We command you that of the goods and chattels, lands and tenements of the Illinois River Railroad Company, defendants, in your county, you cause to be made the sum of seven hundred dollars forty-three cents, which Lafayette Schaaffer, plaintiff, lately in the circuit court of
468 said Mason County, at a term thereof begun and held at Havana, in said Mason County, on the fourth Monday of October, A. D. 1866, recovered against the said defendants, and which by the said court was adjudged to the said plaintiff in a certain action of assumpsit. And also the further sum of six dollars and ninety-five cents, which were adjudged to the plaintiff for costs and charges in that behalf expended, whereof the said defendants stand convicted, as appears to us of record; and have you these moneys ready to render to the said plaintiff for damages and costs aforesaid, and make return of this writ with an endorsement thereon in what manner you shall have executed the same in ninety days from the date hereof.

Witness John H. Havighorst, clerk of the said court, and seal thereof, at Havana, in said county, this 7th day of February, A. D. 1867.

[SEAL.] JOHN H. HAVIGHORST, *Clerk*,
Per W. E. KNOX, *Deputy Clerk*.

On the back of said execution appears the following endorsement:

I return this execution in no part satisfied, no property of the Illinois River Railroad Company, the defendant, being found in my county.
March 6th, 1867.

JAS. L. HASTINGS,
Sheriff.

Filed March 6th, 1867.

469 I, Leonard Schwenk, clerk of the circuit court of Mason County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the record and the papers on file in a certain cause then pending in said court on the common law side thereof, wherein Lafayette Schaffer was plaintiff and Illinois River Railroad company was defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Havana, this 9th day of December, A. D. 1872,

[L. S.] LEONARD SCHWENK, *Clerk*,
By J. K. P. BOWMAN, *Dep'y Clk*.

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, cl'k.

EXHIBIT O.

In circuit court, October term, A. D. 1866.

UNITED STATES OF AMERICA,
State of Illinois, Mason County, ss:

Pleas before the honorable James Harriott, judge of the twenty-first

judicial circuit of the State of Illinois and sole presiding judge of the circuit court of Mason County, in the State aforesaid, and at a term thereof begun and held at the court-house in the town of Havana, in said county, on the fourth Monday (being the twenty-second day) of October, in the year of our Lord one thousand eight hundred and
470 sixty-six, and of the Independence of the said United States the ninety-first.

Present, honorable James Harriot, judge of the 21st judicial circuit of the State of Illinois; C. A. Roberts, State's attorney; L. M. Hillyer, sheriff.

Attest:

JNO. H. HAVIGHORST,
Clerk.

(No præcipe or summons on file in this cause.)

Whereas, on the 23d day of November, A. D. 1866, the following declaration was filed in a cause then pending, wherein Reuben Bergstresser et als. were plaintiffs, and the Illinois River Railroad Company was defendant, in words and figures following, to wit:

Of the October term, A. D. 1866, of the Mason circuit court.

STATE OF ILLINOIS,
Mason County, ss:

REUBEN BERGSTRESSER & LOT BERGSTRESSER, plaintiff,
vs.
ILLINOIS RIVER RAILROAD COMPANY, DEFENDants. } Assumpsit.

Reuben Bergstresser & Lot Bergstresser complains of Illinois River Railroad Company in a plea of trespass on the case on promises,
471 for that whereas the defendant heretofore, to wit, on the first day of October, A. D. eighteen hundred and sixty-six, at the said county of Mason, was indebted to the plaintiff in the sum of fifteen hundred and twenty-two dollars and ninety two cents, for goods, wares, & merchandise sold & delivered to the said defendant by said plaintiffs at their special instance and request, & being so indebted the said defendant, in consideration thereof, to wit, on the day and year aforesaid, at the said county of Mason, undertook & promised the said plaintiffs to pay them the said sum of money when they should be thereunto afterwards requested; also for that whereas the said defendant and the said plaintiffs heretofore, to wit, on the 1st day of October, A. D. 1866, at the said county of Mason, accounted together for certain moneys before that time due from the said defendant to the said plaintiffs, upon which accounting the said defendant was found to be in debt to the plaintiffs in the sum of fifteen hundred and twenty-two dollars and ninety-two cents, in consideration whereof the said defendant, to wit, on the day and year aforesaid, at the said county of Mason, undertook, & then & there faithfully promised the said plaintiffs to pay them the said last mentioned sum of money when they should be thereunto afterwards re-
472 quested, yet though often requested the said defendant has not paid the said sums of money in the foregoing counts of this declaration mentioned nor any part of the same, but the same to do

have hitherto wholly neglected & refused & still neglects & refuses, to the damage of the said plaintiffs fifteen hundred and twenty-two dollars & ninety-two cents, & then they sue, &c.

H. E. DUMMER,
Att'y f' P.

Follows.

Copy of ¾ sued on.

Illinois River Railroad Company to Reuben & Lot Bergstresser, Dr.

Jan. 1, 1860.	To merchandise sold & delivered	1,079 63
	Int'st, @ 6 p'r ct., from Jan. 17, 1860, to date (Nov. 22, '66)	443 29
		$1,522 92

Afterwards, on the 23d day of November, 1866, it being the seventeenth day of said term of court, the following order was made in the above-entitled cause in the words and figures following, to wit:

REUBEN BERGSTRESSER ET AL. } Assumpsit.
vs.
ILL'S RIVER R. R. CO. }

This day come the plaintiffs, by H. E. Dummer, their attorney, and now also come the defendants, by B. S. Prettyman, their vice-president, who enters their appearance herein, and on motion of plaintiffs' attorney it is ordered by the court that defendants to be called and ruled to answer or plead herein instanter; and the' being so called come not nor comes any one for them, but wholly make default; and the court having heard the evidence, and being now sufficiently advised in the premises, doth consider & order that plaintiffs have and recover of the said defendants the sum of one thousand five hundred and twenty-two & $\frac{92}{100}$ dollars as their damages in this behalf sustained, together with their costs in this behalf expended, and that execution issue therefor.

473

Afterward, to wit, on the 7th day of February, A. D. 1867, the following execution was issued in words & figures following, to wit:

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff of Mason County, greeting:

We command you that of the goods and chattels, lands, and tenements of the Illinois River Railroad Company, defendants, in your county, you cause to be made the sum of one thousand five hundred and twenty-two dollars and ninety-two cents, which Reuben Bergstresser, plaintiffs, lately in the circuit court of said Mason County, at a term thereof begun and held at Havana in said Mason County, on the fourth Monday of October, A. D. 1866, recovered against the said defendant, and which by the said court was adjudged to the said plaintiff in a certain action of assumpsit, and also the further sum of seven dollars and five cents which were adjudged to the plaintiffs

474

for costs and charges in that behalf expended, whereof the said defendants stand convicted, as appears to us on record, and have you these moneys ready to render to the said plaintiffs for damages and costs aforesaid, and make return of this writ, with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness John H. Havighorst, clerk of said court, and the seal thereof, at Havana, in said county, this 7th day of February, A. D. 1867.

[SEAL.] JNO. H. HAVIGHORST, *Clerk*,
Per W. E. KNOX, *Deputy Clerk*.

On the back of said execution appears the following return, to wit:

I return this execution in no part satisfied, no property of the Illinois River Railroad Company, the defendant, being found in my county.
March 6th, 1867.

JAS. L. HASTINGS,
Sheriff.

Filed March 6th, 1867.

475 I, Leonard Schwenk, clerk of the circuit court of Mason County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the record and the papers on file in a certain cause then pending in said court on the common law side thereof, wherein Reuben Bergstresser et als. were plaintiff, and Illinois River Railroad Company was defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Havana, this 9th day of December, A. D. 187 .

[L. S.] LEONARD SCHWENK, *Clk*.

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, cl'k.

EXHIBIT P.

In circuit court, October term, A. D. 1866.

UNITED STATES OF AMERICA,
State of Illinois, Mason County, ss:

Pleas before the honorable James Harriott, judge of the twenty-first judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Mason County, in the State aforesaid, and at a term thereof begun and held at the court-house in the town of Havana, in said county, on the fourth Monday (being the 22d day) of October, in the year of our Lord one thousand eight hundred and sixty-six,
476 and of the Independence of the said United States the ninety first.

Present, honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois; C. A. Roberts, State's attorney; L. M. Hillyer, sheriff.

Attest:

JOHN H. HAVIGHORST,
Clerk.

Whereas on the 9th day of October, A. D. 1866, the following summons was issued in a cause pending wherein Henry McKee, trading as H. McKee & Co., for the use of himself, William L. Way & the administratrix of William Leeper was plaintiff, and Illinois River Railroad Company was defendant, in words and figures as follows, to wit:

STATE OF ILLINOIS,
Mason County:

The people of the State of Illinois to the sheriff of Mason County, greeting:

We command you that you summon Illinois River Railroad Company, if found in your county, personally to be and appear before the circuit court for said county, on the first day of the next term thereof, to be holden at the court-house, in Havana, in said county, on the fourth Monday of October instant, to answer unto Henry McKee, trading as H. McKee & Co., for the use of himself, William L. Way & the administratrix of William D. Leper, of a plea of assumpsit, to the dam-
477 age of said plaintiff, as he says, in the sum of twelve hundred dollars, and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness John Havighorst, clerk of said court, and the seal thereof, at Havana, in said county, this 9th day of October, A. D. 1866.

[SEAL.] JOHN H. HAVIGHORST, *Clerk*,
Per W. E. KNOX, *Deputy Clerk*.

[Rev. stamp, 50c., cancelled.]

On the back of said summons appears the following endorsement:

STATE OF ILLINOIS,
Mason County, ss:

I hereby certify that I cannot within my county find the within named Ill's R. R. Co. this 13th day of October, 1866.

13th day of October, 1866.

L. M. HILLYER,
Sheriff.

And afterward, to wit, on the 9th day of October, A. D. 1866, the following declaration was filed in the above entitled cause in words and figures as follows, to wit:

Of the October term, A. D. 1866, of the Mason circuit court.

STATE OF ILLINOIS,
Mason County, ss:

HENRY MCKEE, TRADING AS H. MCKEE & CO., plaintiff, *vs.* ILLINOIS RIVER RAILROAD COMPANY, DEFENDANTS.	Assumpsit. Damages, $1,200.00.

478 Henry McKee, trading of H. McKee & Co., for the use of himself, William L. Way, & the administratrix of William D. Leeper, complains of Illinois River Railroad Company, summoned, &c., in a plea of trespass on the case on promises: for that whereas the said defendant heretofore, to wit, on the sixth day of February, in the year of our Lord eighteen hundred and sixty, to wit, at the said county of Mason, executed and delivered to the said plaintiff their certain instrument in writing commonly designated as a due bill, which due bill is in words & figures following, to wit:

[$163.63.]

Due to H. McKee & Co. the sum of one hundred and sixty-three $\frac{63}{100}$ dollars, with ten per cent. interest from date, to be paid in freights on the Illinois River Railroad at the usual rates. February 6th, 1860.

ILLINOIS RIVER RAILROAD COMPANY,
By R. S. THOMAS.

And the plaintiff avers that after paying the following amounts, to wit, the sum of eight dollars & eight cents, on the 15th day of May, 1860, and the further sum of one dollar on or before the fifteenth day of May, 1860, and the further sum of twenty-two $\frac{15}{100}$ dollars on the 26th May, A. D. 1860, the said defendant failed with their said road, and by transferring and assigning their interest in the same & thereby utterly deprived & disabled themselves from paying the said sum in said
479 due bill specified according to its tenor and effect; and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the said county of Mason, undertook and then and there faithfully promised the plaintiff to pay to me the said sum of money in said due bill specified according to its tenor and effect.

2ND COUNT. Also for that whereas the said defendant heretofore, to wit, on the sixth day of February, in the year of our Lord eighteen hundred and sixty, to wit, at the said county of Mason, made their certain promissory note or due bill & then & there delivered the same to one William L. Way, which due bill is in words & figures following, to wit:

$405.16.] FEBRUARY 6TH, 1860.

Due to William L. Way or order the sum of four hundred & five dollars and sixteen cents, with ten per cent. interest from date, for value received.

(Signed) THE ILLINOIS RIVER RAILROAD COMPANY,
By R. S. THOMAS, *its President.*

And the plaintiff avers that afterwards, to wit, on the day and year aforesaid, to wit, at the said county of Mason, the said William L. Way, by his endorsement in writing on said note, assigned and transferred said note to the said plaintiff, & then & there delivered the said
480 note to the plaintiff, by means whereof the defendant then and there became liable to pay to the said plaintiff the said sum of money in said last mentioned due bill specified according to its tenor and effect, & being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the said county of Mason, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money in said last mentioned due bill specified according to its tenor and effect.

3D COUNT. Also for that the said defendant heretofore, to wit, on the first day of May, in the year of our Lord eighteen hundred and fifty-nine, to wit, at the said county of Mason, made their certain other promissory note or due bill, which is in words & figures following, to wit:

$60.]

Wm. D. Leeper or bearer sixty dollars, being for timber for Sangamon River Bridge on Illinois River Railroad, with ten per cent. interest from date. May 1, 1859.

(Signed) ILLINOIS RIVER R. R. COMPANY,
By R. S. THOMAS, *Its President.*

& the defendant then and there delivered the said due bill to the said William D. Leeper, and afterwards, to wit, on the day & year last aforesaid, the said William D. Leeper, by his endorsement in writing on said due bill, assigned & transferred the same to the plaintiff, and then and there delivered the same to the said plaintiff, by means whereof the said defendant then and there became liable to pay the said sum of money in said last mentioned due bill according to its tenor & effect; & being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the said county of Mason, undertook and promised the said plaintiff to pay him the said sum of money in said due bill specified according to its tenor and effect; yet, though often requested, the said defendant has not paid the said sums of money in the foregoing counts of this declaration mentioned, nor any part of the same, but the same to do hitherto wholly neglected and refused, & still neglects and refuses, to the damage of the said plaintiff twelve hundred dollars, & therefore he sues, &c.

481

HENRY E. DUMMER,
Att'y for Pl'ff.

Of the Sept. term, A. D. 1866, of the Mason cir't court.

STATE OF ILLINOIS,
Mason County:

HENRY MCKEE, FOR USE OF, &C.,
vs.
ILLINOIS RIVER RAILROAD COMPANY.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay all costs that may accrue in this action either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State.

482

Sept. 24, 1866.

HENRY E. DUMMER.

And afterwards, to wit, on the 23rd day of November, A. D. 1866, it being the 17th day of the October term of said court, the following order was made and entered of record in the above-entitled cause, in words and figures following, to wit:

H. MCKEE & CO., PLAINTIFF,
vs.
ILLINOIS RIV. R. R. CO., DEFENDANT.
Assumpsit. No. 90.

This day come the said plaintiffs by Henry E. Dummer, their att'y, and the said defendants by Benj. S. Prettyman, their vice president and attorney, having entered their appearance, and being three times solemnly called come not, nor comes any one for them, but wholly make default herein. It is therefore considered and ordered by the court that said plaintiffs have judgment by default against the said defendants for their damages herein.

And it appearing to the court that this suit is brought upon an instrument of writing for the payment of money only, and that the damages of said plaintiff in this cause rest in computation, it is therefore ordered by the court that the clerk assess, compute, and report the said damages. Whereupon the clerk proceeded to make the assess-

483

ment and computation aforesaid, and report to the court the sum of ($1,011.53) one thousand and eleven & $\frac{53}{100}$ dollars, as the amount of the plaintiffs' damages herein, which assessment and computation upon examination by the court appearing to be just and correct is by the court approved and allowed. It is therefore considered and ordered by the court that the said plaintiff have and recover of the said defendant the said sum of ($1,011.53) one thousand and eleven & $\frac{53}{100}$ dollars, being the amount of the damages assessed and computed as aforesaid, together with their costs and charges herein expended, and that they have execution therefor against the said defendants.

And afterwards, to wit, on the 7th day of February, A. D. 1867, the following execution was issued in the above-entitled cause, in words and figures as follows, to wit:

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff of Mason County, greeting:

484 We command you that of the goods and chattels, lands and tenements of the Illinois River Railroad Company, defendants, in your county you cause to be made the sum of one thousand and eleven dollars and fifty three cents, which H. McKee, trading as H. McKee & Co., for the use of himself, William L. Way, & the administratrix of William D. Leeper, plaintiffs, lately in the circuit court of said Mason County, at a term thereof begun and held at Havana, in said Mason County, on the fourth Monday of October, A. D. 1866, recovered against the said defendants, and which by the said court was adjudged to the said plaintiffs in a certain action of assumpsit, and also the further sum of nine dollars and fifteen cents, which were adjudged to the plaintiff for costs and charges in that behalf expended, whereof the said defendants stand convicted as appears to us of record; and have you these moneys ready to render to the said plaintiff for damages and costs aforesaid, and make return of this writ with an endorsement thereon in what manner you shall have executed the same in ninety days from the date hereof.

Witness John H. Havighorst, clerk of said court, and the seal thereof, at Havana, in said county, this 7th day of February, A. D. 1867.

485 [SEAL.] JNO. H. HAVIGHORST,
Clerk,

Per W. E. KNOX,
Deputy Clerk.

On the back of the above execution appears the following endorsement, as follows, to wit:

I return this execution in no part satisfied, no property of the Illinois River Railroad Company, the defendant, being found in my county.

March 6th, 1867.

JAS. S. HASTINGS,
Sheriff.

I, Leonard Schwenk, clerk of the circuit court of Mason County, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the proceedings in a certain cause then pending in said court on the common law side thereof, wherein H.

McKee & Co. was plaintiff and Illinois River Railroad Company was defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Havana, this 6th day of December, A. D. 1872.

[L. S.] LEONARD SCHWENK,
Clerk,
By J. K. P. BOWMAN,
Dep'y Cl'k.

(Endorsed:) Filed Sept. 14, 1876. J. A. Jones, cl'k.

486 In circuit court, February term, 1859.

UNITED STATES OF AMERICA,
State of Illinois, Tazewell County, ss:

Pleas before the honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Tazewell County, in the State aforesaid, and at a term thereof begun and held at the court-house in the city of Pekin, in said county, on the first Monday, being the 7th day, of February, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois; Merrill C. Young, clerk; Hugh Fullerton, State's attorney; Thomas C. Reeves, sheriff.

Attest:

MERRILL C. YOUNG, *Clerk.*

EXHIBIT Q.

IN THE MATTER OF JAMES BLAIR, PLAINTIFFS, *vs.* ILLINOIS RIVER RAILROAD COMPANY, DEFENDANTS. } In assumpsit.

Be it remembered that heretofore, to wit, on the 30th day of September, 1858, came the plaintiff, by his attorney, and filed his præcipe, as follows, to wit:

487 Circuit court, October term, A. D. 1858.

STATE OF ILLINOIS,
Tazewell County, ss:

JAMES BLAIR
vs.
ILLINOIS RIVER RAILROAD COMPANY.

The clerk will issue summons to the sheriff of Tazewell County in the above case in a plea of trespass on the case upon promises, to plaintiff's damages two hundred dollars.

Sept. 28th, A. D. 1858.

DAVISON & PARKER,
Plaintiff's Attorneys.

To M. C. Young, Esqr.,
Clerk of Circuit Court.

Filed Sept. 30th, 1858.

M. C. YOUNG, *Clerk.*

And on the same day plaintiff filed his declaration as follows, to wit:

Declaration.

Circuit court, October term, A. D. 1858.

STATE OF ILLINOIS,
Tazewell County, ss:

The Illinois River Railroad Company, defendant in this suit, was summoned to answer James Blair, the plaintiff, in a plea of trespass on the case upon promises, and thereupon the said plaintiff complains that the said defendant, at Pekin, in said county, on the twentieth day of November, A. D. 1857, made a certain promissory note of that
488 date, signed by Joshua Wagenseller, its secretary, by the name of J. Wagenseller, sec., in and by which note the defendant acknowledged to be due to the plaintiff, or bearer, one hundred and twenty-two dollars $\frac{75}{100}$, for value rec'd, by means whereof and by force of the statute in such cases made and provided the defendant became liable to pay the plaintiff the amount of money therein specified; and being so liable, the defendant thereupon then and there undertook and faithfully promised to pay the plaintiff the same according to the tenor and effect of said note.

And whereas, also, said defendant afterwards, to wit, on the twenty-first day of November, in the year of our Lord one thousand eight hundred and fifty seven, to wit, at Pekin, in said county, became and was indebted unto the plaintiff in a large sum of money, to wit, two hundred dollars, for money before that time lent and advanced to, and paid, laid out, and expended for said defendant by said plaintiff at said defendant's request, and for money before that time had and received by said defendant to and for the use of said plaintiff, and also in like sum for goods, wares, and merchandise before that time sold and delivered by said plaintiff to said defendant at like special instance and request, and also in like sum for labor, care, and diligence of said plaintiff
489 before that time done and performed by said plaintiff for said defendant and at the like instant and request of said defendant; and being so indebted, said defendant, in consideration thereof, then and there undertook and promised to pay said plaintiff said last-mentioned sum of money thereunto requested, yet the said defendant, not regarding his promises and undertakings, but contriving, &c., although often requested to do, hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of said plaintiff of two hundred dollars, and therefore he brings his suit, &c.

DAVISON & PARKER,
Plaintiff's Attorneys.

OFFICE OF N. E. DIVISION, ILL. R. R.,
Pekin, Nov. 20th, 1857.

There is due to James Blair, or bearer, one hundred and twenty-two dollars $\frac{75}{100}$, for value received.

$122\frac{75}{100}$. J. WAGENSELLER.

Filed Sept. 30th, 1858.

M. C. YOUNG, *Clerk.*

And thereupon there was issued a summons as follows, to wit:

STATE OF ILLINOIS,
Tazewell County, ss:

In the name of the people of the State of Illinois, to the sheriff of said county, greeting:

We command you that you summon Illinois River Railroad Com-
490 pany, if they shall be found in your county, personally to be and appear before the circuit court of said county on the first day of the next term thereof, to be held at the court-house in Pekin, in said county, on the second Monday of October next, then and there to answer unto James Blair in a plea of trespass on the case on promises, to the damage of said plaintiff, as he says, in the sum of two hundred dollars. And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness, M. C. Young, clerk of said circuit court, and the seal thereof hereto affixed at Pekin, on this 30th day of September, A. D. 1858.

[SEAL.] M. C. YOUNG, *Clerk*,
By L. W. SHEPHERD, *Deputy*.

And afterwards, to wit, on the 19th day of February, 1859, said plaintiff files his certain note as follows, to wit:

OFFICE OF N. E. DIVISION ILLS. R. R.,
Pekin, Nov. 20th, 1857.

There is due to James Blair or bearer one hundred and twenty-two dollars $\frac{75}{100}$ for value rec'd.
$122 $\frac{75}{100}$.

J. WAGENSELLER, *Sec.*

(Endorsed:) J. Wagenseller. Railroad. Filed Feb'y 19th, 1859. M. C. Young, clerk.

491 And afterwards, to wit, on the 18th day of February, A. D. 1859, being the 10th day of the regular February term, A. D. 1859, the following proceedings were had of record in said cause, to wit:

JAMES BLAIR
vs.
ILLINOIS R. R. R. Co. } In assumpsit. Default.

Now, on this day come the plaintiff by attornies & Parker, & the defendants, having been regularly served with process, was three times solemnly called, came not, but made default. It is therefore considered by the court, that the plaintiff hath sustained damages by reason of the breach of promises in the declaration mentioned; but because those damages are unknown to the court, the clerk is ordered to make an assessment thereof; and he having assessed those damages to ($131 $\frac{75}{100}$) the sum of one hundred thirty one & $\frac{75}{100}$ dollars, and made report thereof to the court, which is approved, it is therefore ordered and adjusted by the court that the plaintiff recovers of and from the defendants the damages aforesaid, in form aforesaid assessed, & likewise the costs and charges by him about his suit expended, and that execution issue therefor.

And afterwards, to wit, on the days of the dates thereof, there
492 was issued the following executions, the following hereof being copies of the same with endorsements thereon, to wit:

Execution.

STATE OF ILLINOIS,
Tazewell County, ss.

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that, of the goods, chattels, lands and tenements of the Illinois River Railroad Company to be found in your county, you cause to be made the sum of one hundred and thirty-one and $\frac{83}{100}$ dollars damage, and six & $\frac{55}{100}$ dollars costs, which on the 18th day of February, A. D. 1859, in our circuit court for said Tazewell County James Blair recovered against the said Ills. River Railroad Co., and have you that money, debt, damage, and interest thereon from the said 18th day of February, 1859, ready in ninety days from the date hereof to render the said James Blair. And you hereof make due return, with an endorsement of the manner in which you shall have executed the same.

Witness, Merrill C. Young, clerk, and the seal of said court, at Pekin, this 2nd day of March, A. D. 1859.

[L. S.] MERRILL C. YOUNG,
Clerk Circuit Court.

Deputy.

This execution came to hand March 25th, at 10 o'clock a. m., A. D. 1859.

T. C. REEVES,
Sheriff T. C.

493 No property found this 30th May, 1859.

T. C. REEVES,
Sheriff T. C.

(Endorsed:) Filed Oct. 24th, A. D. 1859. M. C. Young, clerk.

STATE OF ILLINOIS,
Tazewell County, ss:

The people of the State of Illinois, to the sheriff of said county, greeting:

We command you that, of the goods, chattels, lands, and tenements of the Illinois River Railroad Company to be found in your county, you cause to be made the sum of one hundred and thirty-one & $\frac{83}{100}$ dollars damage, and eight and $\frac{15}{100}$ (8.15) dollars costs, which on the 18th day of February, A. D. 1859, in our circuit court for said Tazewell County, James Blair recovered against the said Illinois River Railroad Company, and have you that money, debt, damage, and interest thereon from the said 18th day of February, 1859, ready in ninety days from the date hereof to render the said James Blair. And you hereof make due return, with an endorsement of the manner in which you shall have executed the same.

Witness, Merrill C. Young, clerk, and the seal of said court, at Pekin, this 24th day of October, A. D. 1859.

[L. S.] MERRILL C. YOUNG,
Clerk Circuit Court.

Deputy.

494 Received this execution October 24th, at 10 o'clock a. m., A. D. 1859.

T. C. REEVES,
Sheriff, T. C.

Returned by order of plaintiff, no property found accruing.

T. C. REEVES,
Sheriff T. C.

(Endorsed:) Filed March 8th, A. D. 1876. M. C. Young, clerk.

STATE OF ILLINOIS,
Tazewell County, ss:

The people of the State of Illinois, to the sheriff of said county, greeting:

We command you that, of the goods, chattels, lands, and tenements of the Illinois River Railroad Company to be found in your county, you cause to be made the sum of one hundred and thirty-one & $\frac{53}{100}$ dollars damage and ($11.25) eleven & $\frac{25}{100}$ dollars costs, which, on the 18th day of February, A. D. 1859, in our circuit court for said Tazewell County, James Blair recovered against the said Illinois River Railroad Company, and have you that money, debt, damage, and interest thereon from the said 18th day of February, 1859, ready in ninety days from the date hereof to render the said James Blair. And you hereof make due return, with an endorsement of the manner in which you shall have executed the same.

Witness, Merrill C. Young, clerk, and the seal of said court, at
495 Pekin, this 8th day of March, A. D. 1860.

[L. S.] MERRILL C. YOUNG.
Clerk Circuit Court.

Deputy.

This execution came to hand this 10th day of March, A. D. 1860, at 10 o'clock a. m.

T. C. REEVES,
Sheriff T. C.

No property found this 6th June, 1860.

T. C. REEVES, *S. T. C.*

(Endorsed:) Filed June 20th, A. D. 1860. M. C. Young, clerk.

STATE OF ILLINOIS,
Tazewell County, ss:

I, W. P. Allensworth, clerk of the circuit court in and for said county in said State, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record of all proceedings and of all the papers upon the files of our circuit court in a certain cause lately pending therein, on the common law side thereof, wherein James Blair was plaintiff and Illinois River Railroad Company was defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at office in Pekin on this 15th day of November, 1872.

[L. S.] W. P. ALLENSWORTH, *Clerk.*
T. H. HATCH, *Deputy.*

496 (Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, cl'k.

EXHIBIT R.

In circuit court, October term, A. D. 1867.

UNITED STATES OF AMERICA,
State of Illinois, Mason County:

Pleas before the honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Mason County, in the State aforesaid, and at a term thereof begun and held at the court-house in the town of Havana, in said county, on the fourth Monday (being the twenty-first day) of October, in the year of our Lord one thousand eight hundred and sixty seven, and of the Independence of the said United States the ninety second.

Present, honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois; C. A. Roberts, State's attorney; S. M. Hillyer, sheriff.

Attest:

JNO. H. HAVIGHORST, *Clerk.*

Whereas, to wit, on the 7th day of October, 1867, the following præcipe for summons was filed in a certain cause, wherein Francis Low was plaintiff and the Illinois River Railroad Company was defendant, in the words and figures following, to wit:

497 IN THE MATTER OF FRANCIS LOW
vs.
ILLINOIS RIVER RAILROAD COMPANY. } No. 111.

To JNO. H. HAVIGHORST, Esq.,
Clerk of the said Court:

You will please issue a summons in the above-entitled cause, directed to the sheriff of Tazewell County, on plea of assumpsit, returnable at the October term of said court, A. D. 1867, to the damage of the plaintiff of three thousand dollars, dated the 7th day of October, 1867.

O. H. WRIGHT, *Att'y.*

Filed & issued as requested.
October 7th, 1867.

JNO. H. HAVIGHORST, *Clerk.*

Afterwards, to wit, on the same day, the following summons was issued in the above-entitled cause, in words & figures following, to wit:

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff Tazewell County:

We command you that you summon Illinois River Railroad Company, defendants, if found in your county, personally to be and appear before the circuit court for said Mason County on the first day of the

next term thereof, to be holden at the court-house in Havana, in said Mason County, on the 3d Monday of , 1867, to answer unto Francis Low, plaintiff, of a plea of assumpsit to the damage of
498 said plaintiff, as he says, in the sum of three thousand dollars ($3,000.00), and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness, John H. Havighorst, clerk of said court, and the seal thereof, at Havana, in said county, this 7th day of October, A. D. 1867.

[SEAL.] JNO. H. HAVIGHORST, *Clerk*,
Per W. E. KNOX, *Deputy Clk.*

On the back of said summons appears the following return:

STATE OF ILLINOIS,
Tazewell County, ss:

I hereby certify that I have served the within summons by reading the same to the within-named B. S. Prettyman, vice-president of Ill's Riv. R. R. Co., and by giving him a true copy of same, this 9th day of October, A. D. 1867.

JONATHAN H. MYERS,
Sheriff T. C.

And afterward, to wit, on the 11th day of October, A. D. 1867, the following declaration was filed in the aforesaid cause in words and figures following, to wit:

To the October term of Mason County circuit court, A. D. 1867.

STATE OF ILLINOIS,
Mason County, ss:

FRANCIS LOW
vs.
ILLINOIS RIVER RAILROAD COMPANY. } Assumpsit.

499 In this action Francis Low, plaintiff, by O. H. Wright, his attorney, complaint of the Illinois River Railroad Company, defendant, in a plea of assumpsit, &c. For that whereas the defendant on, to wit, the first day of October, 1867, at, to wit, the county of Mason and State of Illinois, was and still is indebted to the plaintiff in the sum of two thousand dollars for money before that time paid, laid out, & expended by the plaintiff for the use of the defendant at his request; and the sum of two thousand dollars for so much money before that time had and recovered by the defendant to the use of the plaintiff; and in the sum of two thousand dollars for work, labor, and service before that time done and performed and bestowed by the plaintiff for the defendant at his request of said defendant; and in the sum of two thousand five hundred dollars for money found to be due from the defendant to the plaintiff on an account then and there stated between them; and in the sum of one thousand and five hundred dollars for so much money before that time due from the defendant to the plaintiff for interest upon and for the forbearance of divers sums of money before then due from the defendant to the plaintiff and by the plaintiff forborne to
the defendant for long spaces of time before then elapsed at the
500 request of the defendant, whereby the defendant became liable to pay the plaintiff the said several sums of money, when said de-

fendant should be requested; and the said defendant afterwards on, &c., in consideration of the premises then and there promised to pay the said several sums of money to the plaintiff on request, yet the said defendant has not, though often requested, paid the said several sums of money, nor either of them, nor any part thereof, to the damage of the said plaintiff of three thousand five hundred dollars; wherefore he brings suit, &c.

By O. H. WRIGHT,
His Attorney.

Copy of a/c sued on.

Illinois River Railroad Company to Francis Low, Dr.

To money paid, laid out, & expended	$2,000 00
" " had & received	2,000 00
" work, labor, & service	2,000 00
" balance on account stated	2,500 00
" interest on money advanced	1,500 00

Afterwards, to wit, on the 9th day of November, 1867, it being the sixteenth day of October term, A. D. 1867, the following order was made in the above-entitled cause in the words and figures following, to wit:

FRANCIS LOW
vs.
ILL'S RIV. RAILROAD CO. } Assumpsit.

501 This day comes the plaintiff, by his attorney, and asks the court to set aside the judgment and order for execution heretofore at this term of court entered herein, and for leave to amend his declaration in this cause, which, being considered, is allowed and so ordered by the court; and now the said plaintiff, by attorney, presents his amended declaration, and asks that judgment be awarded thereon upon the proofs for plaintiff; and the court being sufficiently advised, doth now order that plaintiff have and recover of the said defendants, the Illinois River Railroad Company, the sum of three thousand three hundred and three & $\frac{33}{100}$ dollars, his damages assessed by the court herein, and that execution issue therefor; and now the plaintiff presents his affidavit and asks that an order be entered by the court for immediate execution, which, being considered, is allowed and so ordered.

Afterward, to wit, on the 2d day of November, 1867, the following affidavit was filed in words and figures following, to wit:

October term, Mason circuit court, A. D. 1867.

STATE OF ILLINOIS,
Mason County:

FRANCIS LOW
vs.
ILLS. RIVER RAILROAD COMPANY. } Assumpsit.

502 Francis Low, the plaintiff in the above entitled cause, after

being duly sworn, upon his oath says, that he believes that the judgment rendered in the above entitled cause will be lost unless execution be issued immediately thereon, and therefore asks that execution be so issued.

FRANCIS LOW.

Subscribed and sworn to before me this 2d day of November, A. D. 1867.

JNO. H. HAVIGHORST, *Clk.*

Afterwards, on the 9th day of November, 1867, the following execution was issued in words & figures following, to wit:

STATE OF ILLINOIS,
Mason County, ss:

The people of the State of Illinois to the sheriff of Mason County, greeting:

We command you, that of the goods and chattels, land and tenements, of Illinois River Railroad Company, defendants, in your county, you cause to be made the sum of three thousand three hundred and three dollars and fifty-three cents, which Francis Low, plaintiff, lately in the circuit court of said Mason County, at a term thereof begun and held at Havana, in said Mason County, on the 3d Monday of October, A. D. 1867, recovered against the said defendants, and which by the
503 said court was adjudged to the said plaintiff in a certain action of assumpsit, and also the further sum of nine dollars and sixty-five cents, which were adjudged to the plaintiff for cost and charges in that behalf expended, whereof the said defendants stand convicted, as appears to us of record; and have you these moneys ready to render to the said plaintiff, for damages and costs aforesaid, and make return of this writ, with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness John H. Havighorst, clerk of said court, and the seal thereof at Havana in said county this ninth day of November, A. D. 1867.

[SEAL.] JOHN H. HAVIGHORST,
Clerk,

Per W. E. KNOX,
Dep'y Clerk.

And on the back of said execution appears the following return, to wit:

STATE OF ILLINOIS,
Mason County, ss:

I hereby certify that I have served the within execution on B. S. Prettyman, vice-president of the Illinois River Railroad Company, and demanded payment of the same from him, which he refused, and I further certify that I find no property in my county belonging
504 to the within named defendants by which I can make the within judg't or upon which to levy, & I therefore return this execution no property foud.

JAS. L. HASTINGS,
Sheriff Mason County.

I, Leonard Schwenk, clerk of the circuit court of Mason County, in the State aforesaid, do hereby certify the above and foregoing to be a

true, perfect, and complete copy of the proceedings in a certain cause then pending in said court, on the common law side thereof, wherein Francis Low was plaintiff and Illinois River Railroad Company was defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Havana this 7th day of December, A. D. 1872.

[L. S.] LEONARD SCHWENK,
Clerk,
By J. K. P. BOWMAN,
Dep'y Clerk.

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, clerk.

EXHIBIT S.

In circuit court, June term, 1860.

UNITED STATES OF AMERICA,
State of Illinois, Tazewell County, ss:

Pleas before the Honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois, and sole presiding judge of the
505 circuit court of Tazewell County, in the State aforesaid, and at a term thereof begun and held at the court-house, in the city of Pekin in said county, on the first Monday, being the 4th day of June in the year of our Lord one thousand eight hundred and sixty.

Present: Honorable James Harriott, judge of the 21st judicial circuit of the State of Illinois; Merril C. Young, clerk; Hugh Fullerton, State's attorney; Thomas C. Reeves, sheriff.

Attest:

MERRILL C. YOUNG,
Clerk.

IN THE MATTER OF AARON D. ADDIS, PLAINTIFFS,
vs.
ILLINOIS RIVER RAILROAD COMPANY, DEFENDANTS.
} In assumpsit.

Be it remembered that on the 9th day of June, 1860, came the said plaintiff, by attorney, and filed in open court his declaration, &c., as follows, to wit:

Of the June term of the Tazewell circuit court, A. D. 1860.

STATE OF ILLINOIS,
County of Tazewell:

And the said Aaron D. Addis, by S. P. Bailey, his attorney, complains of the Illinois River Railroad Company, defendants in this cause summoned, &c., for that whereas the said defendant heretofore, to
506 wit, on the 17th day of March, 1860, at the State and county aforesaid, made their certain promissory note in writing bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and then and there promised to pay, sixty days after the date thereof, to the said plaintiff the sum of two hundred & twenty-five & $\frac{50}{100}$ dollars for value received, according to the tenor and effect of the said

promissory note, and then and there delivered the said promissory note to the said plaintiff, by means whereof and by the force of the statute in such case made and provided the said defendant then and there became liable to pay the said sum of money in the said promissory note specified according to the tenor and effect thereof; and plaintiff avers that by the tenor and effect of said promissory note the said sum of money above named hath been long since due and payable, of which the said defendant hath had notice.

And also for that whereas the said defendant heretofore, to wit, on the 5th day of March, 1860, at the State and county aforesaid, executed his certain other promissory note, in writing, bearing date a certain day and year therein named, to wit, the day and year last afore-
507 said, and then and there delivered the said promissory note to the said plaintiff, by which said promissory note they the said defendants promised to pay to the said plaintiff, sixty days after the date thereof, the sum of eighty-six & $\frac{50}{100}$ dollars, for value received, according to the tenor and effect of the said promissory note, by means whereof and by force of the statute in such case made and provided, they the said defendants then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note, and being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the State and county aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sums of money in the foregoing counts in this declaration mentioned, and which are in said promissory notes named, according to the tenor and effect of the said promissory notes, whenever the said defendants should be thereunto afterwards requested. Yet the said plaintiffs in fact sayeth that although the said sums of money hath been long since due and payable, according to the tenor and effect of the said promissory notes, yet the
508 said defendants, although often requested so to do, hath not, as yet, paid the said several sums of money aforesaid, but to do so hath wholly neglected and refused hitherto, to the damage of the said plaintiff of five hundred dollars. And for this he brings his suit, etc.

S. P. BAILEY,
Att'y for Pl'ff.

June term of the Tazewell circuit court, A. D. 1860.

I hereby enter the appearance of the Illinois River Railroad Company, defendants in the above cause, and submit to trial of the present term of this court.

ILL'S R. R. R. CO.
B. S. PRETTYMAN,
Att'y for Def't.

Filed June 9th, 1860.

M. C. YOUNG, *Clerk.*

And afterward, to wit, on the 8th day of June, 1860, being one of days of regular June term, 1860, of the circuit court of said county, the following proceedings were had of record herein, to wit:

AARON D. ADDIS
vs.
ILLINOIS RIVER RAILROAD COMPANY. } I., 239. Assumpsit.

Now comes the plaintiff, by his attorney, and the appearance
509 of defendants having been entered by B. S. Prettyman, was three times solemnly called, came not, but made default; it is therefore considered by the court that the plaintiff hath sustained damages by reason of the breaches of promises in the declaration mentioned, but because these damages are unknown to the court, the clerk is ordered to make an assessment thereof, and he having assessed these damages to the sum of three hundred & thirteen & $\frac{76}{100}$ dollars, and made report thereof, which is approved by the court, it is therefore ordered and adjudged by the court that the plaintiff recover of said defendants the damages aforesaid in manner and form assessed as aforesaid, likewise the costs and charges by him about his suit expended, and that execution issue therefor.

And on said same day last aforesaid the plaintiff filed his certain notes as follows, to wit:

PEKIN, *March 17th*, 1860.

Sixty days after date we promise to pay Aaron D. Addis, or order, two hundred and twenty-five dollars and fifty-six cents for value received.

$225.56.

ILL'S R. RAILROAD CO.,
By B. S. PRETTYMAN.

$86.80.] MARCH 5TH, 1860.

510 Sixty days after date we promise to pay to Aaron D. Addis, or bearer, eighty-six $\frac{80}{100}$ dollars, value received.

ILL'S RIVER RAILROAD CO.,
By B. S. PRETTYMAN,
Agent & Att'y.

And afterwards, to wit, on the days of the respective dates thereof, there were issued two certain executions in said cause, the following of which are true copies thereof, with the returns & endorsements thereon, to wit:

STATE OF ILLINOIS,
Tazewell County, ss:

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that of the goods, chattels, lands, & tenements of the Illinois River Railroad Company to be found in your county you cause to be made the sum of three hundred and thirteen & $\frac{76}{100}$ dollars damage, and three & $\frac{30}{100}$ dollars costs, which, on the 8th day of June, A. D. 1860, in our circuit court for said Tazewell County, Aaron D. Addis recovered against the said Illinois River Railroad Company, and have you that money, debt, damage, and interest thereon from the said 8th day of June, 1860, ready in ninety days from the date hereof to render the said Aaron D. Addis. And you hereof make due return, with an endorsement of the manner in which you shall have executed the same.

511 Witness Merrill C. Young, clerk, and the seal of said court, at Pekin, this 17th day of August, A. D. 1860.

[SEAL.] MERRILL C. YOUNG, *Clerk Cir. Court.*
Deputy.

This execution came to hand August 17th, at 4 o'clock p. m., A. D. 1860.

T. C. REEVES, *S. T. C.*

No property found. Nov. 15th, 1860.

T. C. REEVES, *S. T. C.*

(Endorsed:) Filed Jan. 28th, 1861. G. H. Harlon, clerk.

STATE OF ILLINOIS,
Tazewell County, ss:

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that of the goods, chattels, lands, and tenements of the Illinois River Railroad Company, to be found in your county, you cause to be made the sum of three hundred thirteen & $\frac{76}{100}$ dollars damage and five & $\frac{45}{100}$ dollars costs, which, on the 8th day of June, A. D. 1860, in our circuit court for said Tazewell County, Aaron D. Addis recovered against the said Illinois River Railroad Company, and have you that money, debt, damage, and interest thereon from the said 8th day of June, 1860, ready in ninety days from the date hereof,
512 to render the said Aaron D. Addis. And you hereof make due return, with an endorsement of the manner in which you shall have executed the same.

Witness G. H. Harlon, clerk, and the seal of said court, at Pekin this 27th day of March, A. D. 1861.

[L. S.] GEO. H. HARLON,
Clerk Circuit Court.

Came to hand March 27th, 1860, a 1½ o'clock a. m.

C. WILLIAMSON, *S. T. C.*

I return this execution. No property found. June 19th, 1861.

C. WILLIAMSON, *S. T. C.*

(Endorsed:) Filed June 20th, 1861. G. H. Harlon, clerk.'

STATE OF ILLINOIS,
Tazewell County, ss:

I, W. P. Allensworth, clerk of the circuit court in and for said county, in said State, do hereby certify that the above and foregoing is a full, true and complete transcript of the record of all proceedings and of all the papers upon the files of our circuit court in a certain cause lately pending therein, on the common law side thereof, wherein Aaron D. Addis was plaintiff and Illinois River Railroad Company was defendant.

513 In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at office in Pekin on this 14th day of November, 1872.

[L. S.] W. P. ALLENSWORTH,
Clerk.

T. H. HATCH, *Dep'y.*

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, clerk.

EXHIBIT T.

STATE OF ILLINOIS,
Morgan County:

COUNTY OF MORGAN
vs.
PEORIA, PEKIN & JACKSONVILLE RAILROAD Company, Isaac L. Morrison, Mohler & S. Schooley, & Benj. S. West & William Thomas. } Bill in chancery.

You are hereby notified that I shall on the 30th day of July, A. D. 1873, between the hours of eight o'clock a. m. and six o'clock p. m., take the depositions of Stephen Roney, A. Haynes, A. Haynes, L. Schaffer, Reuben Bergstresser, and Benjamin S. Prettyman, at the office of the clerk of the Tazewell circuit court in Pekin, Tazewell County, Illinois, to be read on the trial of the above entitled cause now pending in the circuit court of Morgan County, Illinois, the taking of said depo-
514 sitions to be continued from day to day between the hours above named until completed.

THE COUNTY OF MORGAN,
By DUMMER & SPRINGER,
Pl'ff' Att'ys.

To the defendants.

Rec'd copy of above notice July 14, 1873.

McCLURE & STRYKER.
EDWARD P. KIRBY.
WM. THOMAS.

STATE OF ILLINOIS,
Morgan County:

COUNTY OF MORGAN
vs.
PEORIA, PEKIN AND JACKSONVILLE Railroad Co., Isaac L. Morrison, Mahlen H. L. Schooley, Benjamin S. West, and William Thomas. }

You are hereby notified that I shall, on the thirtieth (30) day of July, A. D. 1873, between the hours of eight o'clock a. m. and six o'clock p. m., take the depositions of Stephen Roney, A. Haynes, A. Haynes, L. Schaffer, Reuben Bergstresser, and Benjamin S. Prettyman, at the office of the clerk of the Tazewell circuit court in Pekin, in Tazewell County, Illinois, to be read on the trial of the above entitled cause now pending in the circuit court of Morgan County, Illinois, the taking of said
515 depositions to be continued from day to day between the hours named until completed.

THE COUNTY OF MORGAN,
By DUMMER & SPRINGER,
Att'ys.

To the def'ts.

Depositions of Benjamin S. Prettyman and Reuben Bergstresser, taken before me, at the office of the clerk of the circuit court of Tazewell County, Illinois, between the hours 8 o'clock a. m. and six o'clock p. m., on the 30th day of July, A. D. 1873, in pursuance of the annexed notices to be read on the trial of a case now pending in the circuit court of Morgan County, Illinois, in which the county of Morgan is complainant, and the Peoria, Pekin and Jacksonville Railroad Company, Isaac L. Morrison, Mahlon H. L. Schooley, Benjamin S. West and William Thomas are defendants.

BENJAMIN S. PRETTYMAN, having first being duly sworn as provided by law, deposes & says:

Interr'y 1. State whether or not in 1866 and 1867 you entered the appearance of the Illinois River Railroad Company in the following named cases pending in the Mason County circuit court in 1866 & 1867,
516 and whether or not at that time you were the vice-president and attorney of the Illinois River Railroad Company:

Benjamin Beesley	vs.	Ill. R. R. Company.
Harvey O'Neal et al.	vs.	do.
Francis Low	"	do.
Henry T. Thomas, adm'r	"	do.
R. & S. Bergstresser	"	do.
Lafayette Schaffer	"	do.
A. & J. Haines	"	do.
Henry McKee	"	do.

Ans. to 1st interrogatory. I believe I was at that time the vice-president of and attorney of the Illinois River Railroad Company, and as such I entered the appearance of the company, as I think, in the case of Henry T. Thomas, adm'r of R. S. Thomas, against said R. R. Co.; Benj. Beasley against said R. R. Co.; Lafayette Schaffer against said R. R. Co.; Reuben Bergstresser against said R. R. Co: A. & J. Haines against said R. R. Co.; H. McKee & Co. against R. R. Co.; process was served upon me in some cases against said R. R. Co.

Interrogatory 2d. Can you state where Lafayette Schaffer resides at this time?

Answer to 2d interrogatory. I have been informed that he is
517 acting as engineer in the Union Pacific or Central Pacific R. R. Co.

Inter'y 3d. State, if you have any knowledge upon that point, what was the character of his claim, whether for perpetual services or otherwise, & the amount of such claim in November, 1860.

Ans'r to 3d interrog'y. Schaffer's claim was for services upon said railroad during its construction and after its completion, & the amount of the claim & interest was the sum for which the judgment was rendered; said services commenced in 1857 and continued until some time in 1861.

Interrogatory 4th. State, so far as you may know, whether Reuben & Lot Bergstresser had in November, 1866, a claim against the Illinois River Railroad Company, & its nature & amount.

Ans'r to 4th interrogatory. I know they had a claim; I believe it was for goods and provisions furnished the men working upon said R. R.; the am't I do not remember, but I think it was originally between $2,000 and $3,000; the account accrued from about 1857 to 1861; I think there was a balance of about $1,500.

518 Interrogatory 5th. State so far as you may know whether or

not A. & J. Haines had a claim against the Illinois River Railroad Company in 1866, & if so, its nature & amount.

Answer to interrogatory 5th. They did have a claim against said R. R. Co.; a part of the claim was for castings furnished said R. R. Co.; and they also had two orders upon the treasurer given by the president, and assigned to them, one for $725.48 and one for $800.00 each dated April 7, 1862. My impression is that the account was between $150 & $200; the account accrued between 1857 & 1861.

Interrogatory 6th. State whether or not H. T. Thomas, as administrator of R. S. Thomas, had a claim against the Illinois River R. Company in 1866, & so far as you know, its nature & amount.

Ans. to interrog'y 6th. I know that Richard S. Thomas had a claim against said R. R. Co., amounting to $15,000 or $16,000, for money furnished the company and expenses, and for services as president of said R. R. Co.; this claim was accruing from between 1855 & 1856 and 1861.

Interrogatory 7th. Can you state whether or not the Illinois R.
519 R. Company ever transferred or assigned to the trustees of the holders of the bonds of the Ill. R. R. Company or to the P. P. & J. R. Co. any property or assets other than the railroad and its appurtenances? & state, also, whether or not as late as 1866, or 1867, the Illinois R. R. Co. had, & controlled & managed assets belonging to said company.

Answer to interrogatory 7th. I have no recollection of the R. R. Co. having transferred to the trustees of the bondholders anything, except the R. R. and its appurtenances, and I know they had some assets, and they had some other assets in the hands of trustees in trust for them for the purpose of paying the floating debt of the said R. R. Co.; some of the assets are not disposed of, not collected at this time.

Cross-interrogatories by W. THOMAS:

Cross-inter'g'y 1st. Were you present, acting as a member of the board of directors of said Illinois River Railroad Company, at the time the road was agreed to be surrendered to Hopkins and other trustees of the bondholders of said company?

Answer to cross-interrog'y 1st. I think I was. I think this was some time in 1862.

520 Cross-int'g 2nd. If there was any meeting of the board of directors of said railroad company for the transaction of business as a board after the surrender of the road to the trustees, state when and where said meeting was held, and the names of directors present.

Answer to cross-interrog'y 2nd. I do not remember distinctly whether there was any such meeting after the surrender of the road or not.

Cross-interr'g' 3rd. State what interest you had, if any, in the result of the suit of W'm Thomas against Morgan County & others taken to supreme court from a decision of Morgan County circuit court.

Answer to cross-int'y 3d. I think I have no interest.

Cross-inter'g'y No. 4. State the date when the possession of the said road was taken by or given to the trustees of the holders of the bonds of the Illinois River Railroad Co.

Answer to cross-interrogatory 4th. I think it was in June or July, 1862.

Re-examination by comp't:

Interrog'y 1st. Did you, or, so far as you know, did R. S. Thomas,
521 president of the Ill. R. R. Co. regard the delivery of the posses-

sion of the railroad & its appurtenances as a dissolution of the said company?

Answer to Interrog'y 1st on re-examination. No.

B. S. PRETTYMAN.

Subscribed & sworn to before me July 30, 1873.

S. R. DRAKE, *Clk.*
By W. W. CLEMENS, *Dep'y.*

REUBEN BERGSTRESSER, of lawful age, being first , deposes & says:

Inter'og'y 1. State whether or not in Nov., 1866, R. & S. Bergstresser had a claim against the Illinois River Railroad Company, & if so, its nature, & what was the unpaid balance, including interest due at that date.

Answer to interrog'y 1. R. & L. Bergstresser had a book-account against said R. R. Co. at that time, amounting to $1,522.92; the following is a copy of the account sued on:

Illinois River Railroad Company to Reuben & Lot Bergstresser, Dr.

	Jan. 1, 1860. To merchandise sold & delivered.....	1,079	63
522	Int. @ 6 p'r ct. from Jan. 17, 1860, to date Nov. 22, '66.	443	29
		$1,522	92

This account was for dry goods, clothing, provisions, &c., furnished the men employed upon said railroad upon orders given (principally) by J. Wagenseller, their secretary & agent of this R. R. Co.

REUBEN BERGSTRESSER.

Subscribed and sworn to before me this July 30, 1873.

S. R. DRAKE, *Clerk.*
By W. W. CLEMENS, *Deputy.*

STATE OF ILLINOIS,
Tazewell County, ss:

I, S. R. Drake, clerk of the circuit court for the county of Tazewell aforesaid, certify that the foregoing depositions of Benjamin S. Prettyman and Reuben Bergstresser were taken before the undersigned clerk, at the office of the clerk of the circuit court of Tazewell County, at Pekin, Illinois, between the hours of 8 o'clock a. m. and 6 o'clock p. m. on the 30th day of July, A. D. 1873; that previous to the taking, each of said witnesses was by me sworn to testify the truth, the whole truth & nothing but the truth in relation to the matters in controversy, so far as interrogated by any of the parties to said suit; that the answers of
523 the witnesses respectively were reduced to writing by me in the order in which the interrogatories were propounded and answered; and that the depositions so taken were read over to the said witnesses, and by them subscribed & sworn to before me.

In witness whereof I have hereunto set my hand and the seal of said court at my office, at Pekin, this 30th day of July, A. D. 1873.

[L. S.]

S. R. DRAKE, *Clerk,*
By W. W. CLEMENS, *Dep.*

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, cl'k.

EXHIBIT U.

STATE OF ILLINOIS,
Morgan County:

COUNTY OF MORGAN
vs.
PEORIA, PEKIN AND JACKSONVILLE RAILROAD Company, Isaac L. Morrison, Mahlon H. L. Schooley, Benjamin S. West and Wm. Thomas.

You are hereby notified that I shall, on the (29th day) twenty-ninth day of July, 1873, between the hours of 8 o'clock a. m. & six
524 o'clock p. m., take the depositions of Benjamin Beesley, and Isaac Vail, and H. O'Neal, Francis Low, at the office of the clerk of the Mason circuit court, in Havana, Mason County, Illinois, to be read at the trial of the above-entitled suit, now pending in this Morgan County circuit court, Illinois, the taking of said depositions to be continued from day to day between the hours above named until completed.

THE COUNTY OF MORGAN.
By SPRINGER & DRUMMER.

To all the defendants.
To the defendants.

Received copy of above notice July 14, 1873.
McCLURE & STRYKER.
EDWARD P. KIRBY.
WM. THOMAS.

STATE OF ILLINOIS,
Morgan County:

COUNTY OF MORGAN
vs.
PEORIA, PEKIN & JACKSONVILLE RAILROAD Company, Isaac L. Morrison, Mahlon H. L. Schooley, Benjamin S. West, and Wm. Thomas.

You are hereby notified that I shall on the (29th) twenty-ninth day of July, 1873, between the hours of 8 o'clock a. m. & six o'clock
525 p. m., take the depositions of Benjamin Beesley and Francis Low, Isaac Vail & H. O'Neal, at the office of the clerk of the Mason circuit court, in Havana, Mason County, Illinois, to be read at the trial of the above-entitled suit, now pending in this Morgan County circuit court, Illinois, the taking of said depositions to be continued from day to day, between the hours above named, until completed.

THE COUNTY OF MORGAN,
By SPRINGER & DUMMER,
Pl'ff's Att'ys.

To all the defendants.

The depositions of Benjamin Beesley and Isaac Vail, of the county of Mason and State of Illinois, witnesses of lawful age, produced, sworn, and examined on their corporal oath, on the 29th day of July, A. D. 1873, at Havana, at my office, in the county of Mason and State of Illinois, by me, Leonard Schwenk, the clerk of the circuit court within and for said county of Mason, in pursuance of the notices hereto annexed, for the examination of the said witnesses, to be read in evidence on behalf of the complainant on the trial of a certain suit now pending and undetermined in the Morgan County circuit court of the county of Morgan, wherein Morgan County is plaintiff and
526 The Peoria, Pekin and Jacksonville Railroad Company, Isaac L. Morrison, William Thomas, Mablon H. L. Schooley, and Benjamin West are defendants.

The said BENJAMIN BEESLEY, being first by me duly sworn, according to law, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff as of the defendant in relation to the matters in controversy between the said parties so far as he should be interrogated thereto, on oath testified as follows:

Interr'y 1. State whether or not in the year A. D. 1866 you had a claim against the Illinois River Railroad Company; &, if so, what was it, its nature, and amount?

Answer. Yes; I had a claim against the Illinois River Railroad Company in the year A. D. 1866, of an account as follows, to wit:

Illinois River Railroad Company to Benjamin Beesley, Dr.

To receiving and counting & receipting for r. road ties and iron for the Illinois River Railroad, as agent for said r. road, commencing July 1st, to Nov'r 30th, 1859, making five months, at $60 per month	$300 00	
527 To interest on 800 from July 9th to Aug. 2d, 1859		$10 00
To two trips from Bath to Havana, to collect coupons from G. N. Walker	8 00	

Interrog'y 2d. State whether or not you rendered the services mentioned in said account; were they actually rendered by you; whether or not the prices charged in said bill of particulars were just & fair or were agreed upon.

Ans'r to interr'y 2d. I did render the services as mentioned in said account. The prices charged in the said bill of particulars for services were agreed upon by witness & Richard S. Thomas, president of the said Illinois River Railroad Company. The item of $10 for interest charged was by agreement also.

Interrogat'y 3d. Did you or not recover judgment on said claim in Nov., 1866? If so, was any part of said claim as above stated paid at or before the time of the recovery of said judgment by the Ill. R. R. Co. or any person for them?

Answer to interrog'y 3d. I recovered judgment on said claim in Nov., 1866. No part of said judgment was paid at or before the time of the recovery of said judgment.

528 Interr'y 4th. State whether or not you had a claim or claims against said company other than are set out in said bill of particulars that were unpaid in Nov., 1866, &, if so, what their nature and amount.

Answer to interrog'y 4th. I had another claim against said company beside the said bill of particulars that was unpaid in Nov., 1866, which I suppose was omitted by an oversight. One item was for sacks, $15.10. This was Dec'r 2d, 1859. I had a claim, also, for orders issued by the said Richard S. Thomas, for merchandise to workmen, which witness paid, this orders amounting together to $30.34.

Question by W. THOMAS:

State the date at which you received a dividend of the amount received in your judgment referred to in the foregoing part of this deposition.

Answer to inter. 1. I do not remember.

BENJ'N BEESLEY.

Subscribed and sworn to before me this 29 day of July, A. D. 1873.

LEONARD SCHWENK,
Clerk of said Court.

529 ISAAC VAIL, being first duly sworn, deposes and says:

Interr'y 1. State whether or not, in the year 1866, yourself, Harvey O'Neal, Benjamin H. Gatton, Richard P. Gatton, & Benjamin Beesley had a claim against the Illinois River Railroad Company, &, if so, its nature & amount.

Answer to interr'y 1st. We had a claim against the said Illinois River Railroad Company in the year 1866, a note, of which the following is a copy:

$5,000.] AUGUST 1ST, 1859.

Six months after date the Illinois River Railroad Company promise to pay to Harvey O'Neal, Isaac Vail, Benjamin H. Gatton, Richard P. Gatton, & Benjamin Beesley (in consideration of that much money advanced to purchase ties for said company) the sum of five thousand dollars, with twenty-five per cent. interest per annum from date.

ILLINOIS RIVER RAILROAD COMPANY,
By R. S. THOMAS, *its President.*

On the back of which appears the following endorsement, to wit:

The pl'ffs direct the entry of such credits on this note as will make the amount due on the 22d November, 1866, of thirty-five hundred & sixty dollars.

H. E. DUMMER,
Att'y, P. C.

530 Interr' 2d. State, if you remember, what was the consideration of said note.

Ans'r to the interrog'y 2d. The consideration of the foregoing note of $5,000.00 was for money furnished to that amount for said company to buy R. road ties with.

Interr'y 3d. State whether or not you are acquainted with handwriting of Richard S. Thomas; and, if so, state whether or not the body & signature are in the handwriting of Richard S. Thomas; & state, further, whether or not said Thomas was at the date of said note the president of the Ill. R. R. Company.

Answer to interrog'y 3d. I think I know Mr. Thomas' handwriting, and verily believe that the body and signature of the said note are in his handwriting, and that he was then the acting president of the Ills. R. R. Company.

Interr'y 4. State what amount was due & unpaid on said note on the 22 November, 1866.

Answer interr'y 4. To the best of my knowledge, there was due and unpaid on the 22nd day of November, 1866, on said note the
531 amount of thirty-five hundred and sixty dollars.

Interrog'y 5. State, if you remember, what rate of interest was charged in making up the amount of thirty-five hundred & sixty dollars on the 22d Nov., 1866.

Answer to interr. 5th. I am not positive, but I think the rate of ten per cent. interest was charged.

Interrog'y 6. State whether or not you & the other payees of said note recovered a judgment for the amount above named on the 22d Nov., 1866, in the Mason County circuit court.

Answer to interr'y 6. Yes, I think we did recover a judgment for the amount above named on the 22nd Nov., 1866, in the Mason County circuit court.

Quest. by W. THOMAS:

I. Did R. S. Thomas pay you the money which reduced the claim to the sum endorsed on the back of the note, or did he pay in some other way? If in any other way, state in what way.

Answer to cross-interr. I. The credits consisted of collections which we' made by us of subscriptions from stockholders in the Ills. R. R. R. Company.

Cross-interr. II. Are you the same person who recovered a judgment against the Ills. R. R. R. Company previous to 1866?

532 Answer to cross-interr. II. I believe I am the same person.

Cross-interr. III. Did R. S. Thomas deposit with you or any of the parties any notes or bonds as collateral security for the payment of the said note of $5,000.00?

Answer to cross-interrogatory III. He did not.

ISAAC VAIL.

Subscribed and sworn to before me this 29th day of July, A. D. 1873.

LEONARD SCHWENK,
Clerk Mason Co., Ills., Circuit Court.

STATE OF ILLINOIS,
Mason County, ss:

I, Leonard Schwenk, clerk of the circuit court within and for the said county of Mason, in the State aforesaid, do hereby certify that in pursuance of the annexed notices I caused the said Benjamin Beesley and Isaac Vail, the witnesses named in the said notices, and whose names are subscribed to the foregoing depositions, to appear before me on the 29th day of July, 1873, as in said notices specified: that previous to the commencement of the examination of the said witnesses they were severally sworn according to law to testify the truth, the whole truth, and nothing but the truth relative to the matters in con-
533 troversy in the said cause now pending and undetermined in the circuit court of Morgan County between Morgan County, plaintiff, and Peoria, Pekin and Jacksonville Railroad Company, Isaac L. Morrison, William Thomas, Mahlon H. L. Schooley, and Benj. S. West, defendants, so far as they should be interrogated concerning the same; that the said depositions were taken at the office of the circuit clerk of Mason County, Ills., in the said Mason County, Ills., on the 29th day of July, 1873, between the hours of eight o'clock a. m. and 6 o'clock p. m. of said day, and was reduced to writing by me, who am neither of the parties in said suit, nor the attorney of either, nor interested in the

event of the same; that after said depositions were taken by me as aforesaid, the interrogatories and the answers thereto of each witness as written down were read over to the said witnesses, and that thereupon the same were signed and sworn to by the said witnesses respectively before me, at the place and on the day and year aforesaid, and that the plaintiff was represented by H. E. Dummer, present in person, and William Thomas, for himself, Schooley & West, and Peoria, Pekin and Jacksonville Railroad Company, and J. L. Morrison, by H. B. McClure, esq.

In witness whereof I have hereunto affixed my hand and seal of said court this 29th day of July, 1873.

[L. S.] LEONARD SCHWENK,
Clerk of Mason County Circuit Court.

534 (Indorsed:) Filed Sept. 14, A. D. 1876. J. A. Jones, clerk.

EXHIBIT V.

COUNTY OF MORGAN
vs.
PEORIA, PEKIN AND JACKSONVILLE RAILROAD Company, Isaac L. Morrison, William Thomas, Mahlon H. S. Schooley, and Benjamin S. West.

The deposition of Francis Low, of the county of Arapahoe and Territory of Colorado, a witness of lawful age, produced, sworn, and examined upon his corporeal oath, on the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and seventy-three, at the office of L. C. Charles, a notary public, in the city of Denver, in the county of Arapahoe and Territory of Colorado, by me, Levin C. Charles, as notary public, duly appointed by a dedimus *protestation* or commission issued out of the clerk's office of the circuit court of Morgan County, in the State of Illinois, bearing test in the name of Jos. W. Caldwell, esq., clerk of the said circuit court, with the seal of the said court affixed thereto and to me directed as such notary public, for the examination of the said Francis Low, a witness in a
535 certain suit and matter in controversy now pending and undetermined in the said circuit court, wherein the County of Morgan is plaintiff and the Peoria, Pekin and Jacksonville Railroad Company, Isaac L. Morrison, William Thomas, Mahlon H. S. Schooley, and Benjamin S. West is defendant, in behalf of the said plaintiff, as well upon the cross-interrogatories of the defendant as on the interrogatories of the plaintiff, which were attached to or inclosed with the said commission, and upon none others.

The said FRANCIS LOW, being first duly sworn by me as a witness in said cause previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows:

Interrogatory first. State whether or not, in the year 1867, you had a claim against the Illinois River Railroad Company; and if so, what was the character and amount of it: and state also whether or not you recovered a judgment on said claim; & if so, for what amount and in what court.

Answer to first interrogatory. In the year 1867 I had a claim against the Illinois River Railroad Company; said claim was for money
536 paid and advanced to said company. The amount of said claim was three thousand three hundred and three $\frac{50}{100}$ ($3,303.50) dollars and some odd cents. I had a running account against said company, and the company had a contra account against me, and the sum of $3,303.50 & some odd cents was the balance due me from said company at the October term of the Mason County circuit court, 1867. I recovered a judgment on said claim against the said Illinois River Railroad Company for the said sum of three thousand three hundred and three $\frac{50}{100}$ ($3,303.50) dollars and some odd cents. The said claim above referred to was in part for services rendered and performed for said company, as well as for money paid and advanced by me to the said company.

Interrogatories by complainant THOMAS:

Interrogatory first. If your account was for money advanced, state the date and amount of such sum advanced, and the name of the person to whom advanced. If the account was for services rendered, state the date of each charge, and what the services where.

Answer to interrogatory first. I cannot give at the present time an itemized statement of the money advanced, nor the dates, nor the several amounts, nor the dates of each charge for the services rendered, nor what the services were, except in part as director and treasurer
537 of the company; for the reason there was a long list of items and of different dates, and I have not with me my books and papers to which to refer to refresh my memory or recollection.

Interrogatory second. State the number of Cass County bonds to the railroad company that you sold, and what you did with the proceeds of sale.

Answer to second interrogatories. I never sold any Cass County bonds. I never had any proceeds of any Cass County bonds.

Interrogatory third. Did you ever render an account to R. S. Thomas or to the company, for the Cass County?

Answer to third interrogatory. I never rendered any account to R. S. Thomas, or to the company for the Cass County, but I rendered monthly accounts of my transactions with and for the company, to which no objection was made.

FRANCIS LOW.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Levin C. Charles, of the county of Arapahoe, and Territory of Colorado, a notary public, or commissioner, duly appointed and authorized to take the deposition of the said Francis Low, a witness, whose
538 name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Francis Low as a witness in the said suit between the said County of Morgan as plaintiff and the Peoria, Pekin and Jacksonville Railroad Company, Isaac L. Morrison, William Thomas, Mahlon H. S. Schooley, and Benjamin S. West, defendant, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said County of Morgan, plaintiff, and the said Peoria, Pekin and Jacksonville Railroad Company, Isaac L. Morrison, William Thomas, Mahlon H. S. Schooley, and Benjamin S. West, defendant, so far as he should be interrogated concerning the same; that the said deposition was taken

at my office in the city of Denver, in the county of Arapahoe, and Territory of Colorado, on the twenty-ninth day of July, A. D. 1873, and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent, Francis Low, before me, the oath being administered by me, the said commissioner and notary public, at the place and on the day and year last aforesaid.

In witness hereof I have hereunto set my hand and notarial seal this 29th day of July, A. D. 1873.

[L. S.] LEVIN C. CHARLES,
Notary Public.

Of the August term, A. D. 1873, of the Morgan County circuit court.

539 STATE OF ILLINOIS,
Morgan, County, ss:

COUNTY OF MORGAN
vs.
PEORIA, PEKIN & JACKSONVILLE RAILROAD Company, Isaac L. Morrison, William Thomas, Mahlon H. S. Schooley, and Benjamin S. West.

The defendants in the above-entitled suit are notified that at the expiration of ten days I will sue out a commission to take the deposition of Francis Low, directed to H. P. H. Bromwell, esq., as commissioner of Denver, Colorado, or clerk of a court of record, or notary public of Colorado, which deposition is to be read in the trial of the above-entitled suit, now pending in the Morgan circuit court. The following are the interrogatories to be propounded to said witness:

1st. State whether or not, in the year 1867, you had a claim against the Illinois River Railroad Company; and if so, what was the character and amount of it; and state also whether or not you recovered a judgment on said claim, & if so, for what amount, and in what court.

July 21st, 1873.

COUNTY OF MORGAN,
By SPRINGER & DUMMER,
Attorneys.

540 Service by copy acknowledged and 8 of the 10 days' notice being waived.
July 21st, 1873.

WM. THOMAS.
McCLURE & STRYKER.
EDWARD P. KIRBY.
ISAAC L. MORRISON.

Interrogatories by complainant Thomas.

First. If your account was for money advanced, state the date and amount of such sum advanced, and the name of the person to whom advanced. If the account was for services rendered, state the date of each charge and what the services were.

Second. State the number of Cass County bonds to the railroad company that you sold, and what you did with the proceeds of sale.

Third. Did you ever render an account to R. S. Thomas or to the company for the Cass County?

STATE OF ILLINOIS,
Morgan County, ss:

I, Joseph W. Caldwell, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing notice, with the acknowledgement to the same, together with the interrogatories and cross-interrogatories, is a full, true and complete copy of the
541 original which are on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Jacksonville, this 24th day of July, A. D. 1873.

[L. S.] JOS. W. CALDWELL, *Clk.*

STATE OF ILLINOIS,
Morgan County, ss:

The people of the State of Illinois to H. P. H. Bromwell, esq., of Denver, Colorado, or clerk of a court of record, or notary public of Colorado, greeting:

Whereas it has been represented to us that Francis Low material witness in a certain cause now pending in an circuit court in and for the county of Morgan aforesaid, between the county of Morgan, plaintiff, and the Peoria, Pekin & Jacksonville Railroad Company, Isaac L. Morrison, William Thomas, Mahlon H. S. Schooley and Benjamin S. West are defendants, and that the said witness resides at the city of Denver, Colorado, aforesaid, without the said State of Illinois, and that his personal attendance cannot be procured at the trial of the said cause.

Now, know ye, that we, in confidence of your prudence and
542 fidelity, have appointed you commissioner to examine the said witness, on the oath or affirmation of the said witness, by you first duly in that behalf administered, and faithfully to take the deposition of the said witness upon all interrogatories inclosed with or attached to these presents, both on the part of the said plaintiff and of the said defendants, and none others; and the same when thus taken, together with the commission and the said interrogatories, to certify unto our said circuit court with the least possible delay.

Witness Joseph W. Caldwell, clerk of said court, and the seal thereof, at Jacksonville, in said county, this 24th day of July, A. D. 1873.

[L. S.] JOS. W. CALDWELL, *Clerk.*

(Endorsed:) Filed Sept. 14th, A. D. 1876. J. A. Jones, cl'k.

EXHIBIT W.

STATE OF ILLINOIS,
Morgan County, ss:

In the circuit court of said county.

WILLIAM THOMAS, COMPLAINANT, *against* THE COUNTY OF MORGAN & OTHERS, DEFENDANTS. } In chancery.

The deposition of Mahlon H. L. Schooley, taken upon interrogatories at the office of R. V. Austin, in the county of Cass, and State of Missouri, before me, Robt. Austin, notary public, to be read as
543 evidence in behalf of the complainant in this cause.

The said SCHOOLEY being of lawful age, and first sworn, deposes in answer to questions, as follows:

Question first. Were you or not the acting secretary of the board of directors of the Illinois River Railroad Company, and book-keeper from the time the board was organized until after the road was surrendered to Hopkins & others as trustees of the holders of the bonds of said company?

Answer. I was.

Question second. State when you moved from the State of Illinois, and where you had resided from 1861 to the time of your removal.

Answer. I resided at Virginia, Cass County, Illinois, (where the office of the company was kept) until December, 1863, when I moved to Mason County, Ills., where I resided till February, 1866, when I removed from the State.

Question third. State whether or not you was present with the board and acting as secretary at the time the road was agreed to be surrendered.

Answer. I was present and acted as secretary when the road was surrendered.

Question fourth. State whether or not the board of directors ever held a meeting after the surrender of the road.

544 Answer. My opinion is they never did; but the record will prove positively.

Question fifth. State what time you ceased to act as secretary for said board, and what disposition was made the records and books of the company.

Answer. I cannot remember dates; but not long after the surrender of the road to Hopkins, Cobb & Studwell, Cook, their late appointed agent, took possession of the safe, desks, & other property then in the office (the books, record & papers being excepted), and removed them, I think, to Pekin; and at the request and solicitation of R. S. Thomas my services were continued for several months succeeding, and much of the time till the fall of 1863, in writing up the books, making bond reports, abstracts, &c. (the books not being written up at the time of surrender), after which my services ceased, say fall of 1863, and the books, record & papers passed to the custody of R. S. Thomas.

Cross-interrogatories to be propounded Mahlon H. L. Schooley:

1st. At what time did you remove from the State of Illinois?

545 2. Was it or not true that the Illinois River Railroad Company after the possession of its road had passed to Hopkins and others as trustees of the bondholders, had, controlled, & disposed of personal assets belonging to said company, such as uncollected subscriptions of stock & judgments on subscriptions of stock?

3d. Did or did not Richard S. Thomas as president of the Ill. R. R. Company, after the possession of the road passed to Hopkins & others, trustees, manage, contract, & dispose of assets of the Illinois R. R. Company, such as subscriptions of stock & judgments on subscriptions of stock?

4th. Did or did not the Ill. R. R. Co. and it allow a claim in favor of himself & against said company; was or was not said claim for services & advances; & how much was it? Did or did not the claim amount to something exceeding $16,000.00? What rate of interest, if any, was agreed to be paid in said claim?

5. Did or did not the Ill. R. R. Company agree to pay R. S. Thomas

claims as allowed, out of the bonds of Morgan County, issued in payment of the subscription of Morgan County to the capital stock of the Illinois River Railroad Company?

6. Was or was not Benjamin S. Prettyman vice president of the Ill. R. R. Company?

546 7. Was or was not the said Benjamin S. Prettyman the attorney of the Illinois River Railroad Company?

8th. Were the Morgan County bonds, mentioned in interrogatory 5, transferred to Hopkins & other trustees for the bondholders, or any part of them, & did the Ill. R. R. Company transfer any of its personal assetts at the time the road & its appurtenances were transferred?

MORGAN COUNTY,
By SPRINGER & DUMMER,
Att'ys for M. Co.

Ten days' notice for suing out com's waived.
SPRINGER & DUMMER.

Answer' to cross-interrogatories.

1. I removed from the State of Illinois in Feb'y, 1866.

2. Have no knowledge that the board, after the surrender of the road to Hopkins & others, ever disposed of assets of any kind belonging to the company. If they did it was made a matter of record.

3. Have no knowledge, nor do I believe he ever did, without authority of the board.

4. The claim was for services and money advanced, amounting to about $16,000. Interest was allowed, but the rate I remember not; a full sta ement of that settlement and allowance with regard to payment was entered on record.

547 5. Have no distinct recollection of Morgan County bonds in connection with the payment of R. S. Thomas' claim; but know that whatever was agreed to by the board was recorded at the time.

6. He was elected only a short time before the surrender of the road.

7. He was appointed only some time before the surrender of the road, and, I think, specially for Tazewell County.

8. No transfer of Morgan County bonds was ever made, so far as I know or believe; nor do I know or believe that any of the personal assets were transferred at the time the road and its appurtenances were transferred, unless included in the same order of transfer to Hopkins, Cobb & Studwell.

M. H. L. SCHOOLEY.

STATE OF MISSOURI.
County of Cass, ss:

I, Robert V. Austin, notary public of said county, do certify that the foregoing deposition of Mahlon H. L. Schooley was taken before me, at my office in said county, on this day, and the same was, after being read over, signed and sworn to by the said Schooley, in my presence.

548 Given under my hand and official seal this the 21st day of July, A. D. 1873.

[L. S.] ROBERT V. AUSTIN,
Notary Public.

(Endorsed:) Filed Sept. 14, 1876. J. A. Jones, cl'k.

EXHIBIT X.

STATE OF ILLINOIS,
Morgan County:

Circuit court of said county, September term, 1863.

ELLIOTT & BROWN
vs.
MORGAN COUNTY, ILL'S, RIVER R. R. CO., ALEXander Studwell, Lucius Hopkins, & George T. Cobb, Richard S. Thomas, William Thomas, Joseph Ladd, & Isaac Vail. } In chancery.

Alexander Studwell, Lucius Hopkins, and George T. Cobb, three of the defendants in the above entitled cause, for answer to so much of the bill herein as they are advised it is necessary for them to answer, and for a bill of interpleader herein, say that on March 1st, 1854, in pursuance of a vote of the county of Morgan, before that day had for that purpose, in pursuance of an act of the general assembly of said State, dated November 5th, 1849, the county court of said county ordered and caused to be issued to the Illinois River Railroad Company, in the bill mentioned, one hundred bonds of five hundred dollars each, bear-
549 ing interest, with coupons thereto attached, as set out in the bill herein. And said court then and there ordered that said bonds so issued be delivered to said railroad company. A certified copy of the order aforesaid, together with all the orders of said court touching said bonds & the issue thereof, is herewith filed as a part of this bill of interpleader & as evidence in this cause, and marked Exhibit A. In pursuance of said order of said court said one hundred bonds were duly made and executed under the seal of the county court, a copy of one of which said bonds is filed with the bill herein, & is here referred to as a part of this bill of interpleader.

As soon thereafter as the fall of the year 1857 said county court delivered all of said bonds, by and with the knowledge and consent of said railroad company and for their use, to Elliott & Brown, the complainants herein, said railroad company being entitled to the exclusive possession of the same, as hereinafter specified; upon delivering to said Elliott & Brown a certificate or certificates of stock in said company in favor of said county of Morgan to the amount of fifty thousand dollars, on Dec. 5th, 1857, said railroad company ordered the issuance and delivery of said certificate of stock therein to the treasurer of said county of Morgan, and the same was so issued and delivered,
550 a copy thereof being delivered to said Elliott & Brown; a copy of said order, marked B, is filed with the original bill herein and is here referred to as a part of this bill of interpleader; which certificate, issued and delivered as aforesaid, was in consideration of said bonds delivered as aforesaid to Elliott & Brown for the use of said company.

At or before the time of issuing said bonds it was agreed and stipulated between said county of Morgan and said railroad company that said bonds were to be used by said company in constructing said road between Virginia, in Cass County, and Jacksonville, in Morgan County, & said Elliott & Brown were to deliver said bonds to said company as the same might be needed for that purpose.

In pursuance of the charter of said company the president & trustees

thereof on the 1st day of November, 1858, for the purpose of securing thirteen hundred and twenty bonds, with the interest thereon to grow due, each of said bonds for one thousand dollars, payable on January 1st, 1880, bearing six per cent. interest, issued by said company and by them sold to said Alexander Studwell, Lucius Hopkins, and George T. Cobb, made, executed, and delivered their mortgage to said
551 Studwell, Hopkins & Cobb, upon all the corporate property belonging to said company, both real and personal, at the date of said mortgage, and all their rights and interests as a corporation, including the bonds and the right to the bonds aforesaid, and then and there delivered said mortgage, after having acknowledged the same according to law, to said mortgagees. A copy of which mortgage, together with a copy of the certificate of acknowledgement, and copies of the certificates of the recording thereof in the counties of Peoria, Tazewell, Mason, Cass, and Morgan, in said State and a copy of the charter of said company and a copy of one of the bonds referred to in said mortgage, are herewith filed in the form of a printed pamphlet and asked to be taken as evidence herein and as a part of this bill of interpleader.

These respondents say that under said mortgage they became interested in said county bonds from the date of said mortgage. One of the conditions of said mortgage is, that if said railroad company at any time fail to pay the interest on the debt thereby secured, then the whole debt should become due, and said mortgagees be entitled to take imme-
552 diate possession of all the mortgaged property, and these respondents now allege that said company did fail to pay said interest, to wit, the amount due Jan. 1st, 1862, & the amount due July 1st, 1862, when due, and for more than thirty days thereafter.

These respondents further allege that because of said failure to pay said interest, afterwards, to wit, on July 12th, 1862, at a regular meeting of the president and trustees of said railroad company, held at Virginia, in Cass County aforesaid, at which meeting said Studwell & Hopkins, representing these respondents, were present, among other things, it was resolved and ordered by said president and trustees, in substance, as follows, to wit: "That the Illinois River Railroad Company hereby admits that the trustees under the mortgage and trust deed executed by this company to Messrs. Studwell, Hopkins & Cobb, dated November 1st, 1858, to secure the payment of 1,320 of its mortgage bonds, amounting in the aggregate to $1,020,000, are now justly and legally entitled to the actual possession of the railroad of this company, as provided in said mortgage or trust deed, and that said company hereby consents and agrees that said trustees, or any two of them, shall and may at any time enter into and upon and take actual possession of the said railroad and all the property, real and personal, franchises and effects of this company, for the purpose and
553 as is provided in said mortgage or trust deed, and that said company hereby consents and agrees that said trustees, or any two of them, shall and may at any time enter into and upon and take actual possession of the said railroad and all the property, real and personal, franchises and effects of this company, for the purpose and as is provided in said mortgage or trust deed, and that they may use and operate said railroad and receive the entire earnings, income, and profits thereof, and apply the same as in and by said mortgage or trust deed is provided." Respondents here refer to a copy of the proceedings of said company at said meeting, filed in this cause with the original bill and marked Exhibit D.

In pursuance of this mortgage and the action aforesaid of said com-

pany, upon such failure to pay interest, these respondents, on the 12th of July, 1862, entered into and upon and took actual possession of said railroad, and said company turned over and delivered to them the said road, with all their property, rights, and franchises, including said bonds of Morgan County, so far as said company were able to deliver them, and said railroad company have never since that date had possession of or control over said road or anything thereunto appertaining.

Respondents further say that after they had thus taken possession of said railroad and effects, to wit, on the 22d of October, 1862, they gave notice to the complainants herein of the acts of said company
554 aforesaid and of their right to said bonds, by delivering to them a certified copy of said resolutions, & requested said complainants to deliver said county bonds to respondents' agent. See copy of said notice attached to Exhibit D, filed with original bill.

Respondents further say that at the last adjourned session of the general assembly of said State a new charter for said railroad was passed and a new company created, and these respondents claim to hold said county bonds for the use and benefit of said new company, to be applied upon the construction of said railroad between Virginia and Jacksonville aforesaid, in compliance with the aforementioned agreement between the old company and the county of Morgan. This new charter adopts the provisions of the old charter, and the same are applicable to the new company. Respondents here present a copy of said new charter and make it a part of the files in this case.

Respondents now allege that by virtue of all the proceedings hereinbefore set out they have become the owners entitled to the possession of said county bonds, and that their said right attached thereto from and after the date of said mortgage; and they further insist that any and every act of said railroad company after the date of said mortgage looking or tending to the use or disposal of said county bonds in
555 any manner other than in constructing said railroad between Virginia and Jacksonville aforesaid was done, if at all, wholly without right, and is null and void, insisting that said company could not rightfully dispose of said bonds in any manner whatever except in the actual construction of said railroad between said places.

Respondents deny that the claim to these bonds set up by Richard S. Thomas is rightful or just, for the reasons following, to wit:

1st. Said R. S. Thomas, being the president of said company, and the party who negotiated the loan, to secure which the mortgage aforesaid was made to these respondents, was fully advised of all said facts before and at the time he attempted to get possession of said county bonds, and knew that said respondents' lien had long before attached thereto.

2d. Said Thomas was estopped from purchasing said county bonds from said company for the consideration and purposes for which he attempted to purchase the same by his contract, made by him as president of said company, with said Morgan County, that said bonds should be used in the construction of the road between Virginia and Jacksonville aforesaid, and not otherwise, and but for which contract said bonds would never have been issued.

3d. On July 12th, 1862, said Thomas had not gained possession of said bonds; the transfer by the company to him, whether rightful
556 or not, was not completed, and on that day he, as president of said company, by his own vote, joined in the transfer by said company to these respondents of said road and everything thereto appertaining, including said bonds, as hereinbefore set forth.

4th. The action of said company on January 31st, 1862, under which

said Thomas claims, was null for that purpose, because there was no mention or specific transfer of these bonds made, the order amounting only to an acknowledgement of a certain indebtedness to Thomas, and authorizing the secretary to draw against any fund belonging to the company for payment of the same, and the secretary's order does not specify how many or what amount of said bonds are to be delivered thereon. Respondents here refer to Exhibit C, filed with original bill herein.

5th. The meeting at Springfield, at which said last mentioned action was had, was void, because the board was not authorized to meet at that place, the office and fixed place of business of said company being at Virginia, in Cass County, and not elsewhere; and because at said meeting but two trustees other than this claimant himself were present, one of whom also claims another part of these bonds; said Thomas not voting, no quorum voted on said order.

557 In relation to the claim of William Thomas to a part of these bonds, these respondents say that said company, by its president & trustees, entered into a contract with Messrs. Allen & McGrady to build the railroad between Jacksonville and Virginia aforesaid, which contract was made before said county bonds were issued, said company, through its president, R. S. Thomas, and its directors, this Wm. Thomas being one of them, represented to the county court of Morgan County the fact of the making of said contract, by which representation and the agreement as to their application hereinbefore set out, said county court was induced to issue said bonds, and upon the delivery of said bonds, as hereinbefore stated, said company, by its aforesaid president & directors, rescinded said contract, using the bonds claimed by said Wm. Thomas to buy the same from Allen & McGrady, and thus left the road without any contract for construction; all of which was an attempt to make an improper application of said bonds with the full knowledge of all the facts aforesaid. As to how said Wm. Thomas procured said order for said bonds from Allen & McGrady these respondents know nothing.

The first, second and third objections, hereinbefore urged to the claim of R. S. Thomas, apply equally to the claim of Wm. Thomas.

558 In relation to the claims of Joseph Ladd and Isaac Vail, these respondents say that they have no just right whatever to any part of these bonds, because they claim to have judgments or claims against said railroad company in some form, but neither of said judgments was rendered in the said county of Morgan, and consequently can have no lien on any property in said county. Again, they have caused garnishee process to issue against said Elliott and Brown to Morgan County from the counties where said judgments were rendered, claiming the right to do so under the 38th section of the 57th chapter of the Revised Statutes of 1845, title, "judgments & executions," and by virtue thereof to seize said bonds in the hands of said Elliott & Brown. Respondents deny that they or either of them have any such right. They deny that they have brought their case within the provisions of said statute authorizing said process to issue at all, or if they have done so, they deny that a garnishee process can issue out of the county where the judgment was rendered, and the court out of which such process issues cannot thereby acquire jurisdiction over said Elliott and Brown in this county. They further deny that such process can be

559 levied or served upon said Elliott & Brown, whereby to reach said county bonds for any purpose, they being simply custodians of said bonds, the real debtor on said bonds, if any, being the county of Morgan. Respondents further say whatever claims said Vail and Ladd

may have, have accrued since the execution of the mortgage to respondents, & are therefore subordinate to the right of said mortgagees.

The premises considered, these respondents pray that, upon the hearing of this cause, these county bonds may by this court be decreed to be the property of these respondents, to be held and used by them or by the railroad company recently chartered to and for the purpose of constructing said railroad between Virginia and Jacksonville, aforesaid, in accordance with the contract made between the old company and the county of Morgan; and that these claimants now setting up claims to these bonds may be forever barred of and from all right to any part thereof, and for all such other and further relief, whether specially prayed or not, as to justice and right may belong; and, as in duty bound, &c.

M. & G. M. McCONNEL,
Sols. for Studwell, Hopkins & Cobb.

(Endorsed:) Filed Sept. 14th 1876. J. A. Jones, cl'k.

560 EXHIBIT Y.

Morgan County court, September term, 1856.

On the petition of a large number of tax-payers of the county, it is ordered that the qualified voters in the county be required, at the general election to be held in November next, to vote for or against authorizing the county court to subscribe fifty thousand dollars to the capital stock of each of the following railroad companies, to wit: To the Jacksonville & Carrollton Railroad Company, fifty thousand dollars, in addition to the former subscription by the county; to the Illinois River Railroad Company, fifty thousand dollars; and to the Tonica & Petersburg Railroad Company, fifty thousand dollars. Said subscription to be made in bonds to be issued by the county court, redeemable on the first day of March, 1877, and to bear interest at the rate of six per cent. per annum; and the clerk of this court is required to give public notice according to law.

Morgan County court, December term, 1856.

Whereas at the general election held at the several precincts of this county on Tuesday the fifth day of November last, it appears by
561 the official abstract of the returns of said election that the whole number of votes cast for county officers was 3,499, and that at the said election there was cast 1,753 votes for subscription of fifty thousand dolls. in bonds of the county to the capital stock of each of the following railroad companies, to wit:

To the Jacksonville & Carrolton Railroad Company, fifty thousand doll's in addition to the former subscription by the county.

To the Illinois River Railroad Company, fifty thousand dollars, and to the Tonica & Petersburg Railroad Company, fifty thousand doll's; said bonds to be redeemable on the first day of March, 1877, to be issued as they may be required, and to bear interest at the rate of six per cent. per annum;

And the votes so cast for subscription being a majority of the votes cast for county officers at said election: Now on the application of Richard Yates and Joseph J. Cassell, acting and in behalf of the railroad company aforesaid, it is ordered that the sum of fifty thousand

doll's, in bonds of this county, redeemable, issuable, and payable, with interest as aforesaid, be and the same hereby is subscribed to the capital stock of the Jacksonville & Carrolton Railroad Company in addition to the former subscription by this county to said capital stock, and
562 the like sum of fifty thousand dollars in like bonds is also hereby subscribed to the capital stock of the Tonica & Petersburg Railroad Company; and it is further ordered that James Berdan, county judge, be authorized and empowered to act with regard to such subscription as may be necessary, according to the charters, rules, or by-laws of the respective companies, to perfect the same, to represent the county as stockholder in voting upon the stock, and to provide for the issuing and delivery of the bonds aforesaid as may be required.

Morgan County court, September term, 1857.

And at said term the following order was made, to wit:

Whereas it is provided in and by an act of the general assembly of the State of Illinois, entitled "An act to facilitate the construction of railroads," approved March 1st, 1854, that any city or county in this State which under the provisions of an act entitled "An act supplemental to an act entitled 'An act to provide for a general system of railroad incorporation,'" approved November 5th, 1849, has heretofore subscribed or may hereafter subscribe for stock in railroad company payable in the bonds of said city or county, it shall be lawful for the city council
563 of such city or the judges of such court, and they are hereby authorized and empowered, to issue and deliver to such railroad company the whole or any portion of the bonds of such city or county, payable on such subscription at any time hereafter, when in their opinion the interest of such city or county will be promoted thereby, whether the assessment, upon the stockholders of said company have been regularly assessed and made payable or not;

And whereas the Jacksonville, Alton & St. Louis Railroad Company, and also the Tonica and Petersburg Railroad Company, have actually undertaken and are now proceeding with the construction of their respective works within this county, and this court is satisfied that the delivery to these companies respectively of the full amount of county bonds heretofore subscribed by the county to the capital stock of said companies, to wit, to the Jacksonville, Alton & St. Louis Railroad Company of bonds to the amount of $100,000, and to the Tonica & Petersburg Railroad Company of bonds to the amount of $50,000, will greatly facilitate the speedy completion of the roads so being constructed and be for the interest and advantage of the county, it is ordered that there be now delivered to said companies respectively bonds of this county of this date, payable as hereinafter mentioned and bearing interest at 6 pr. ct. per annum, payable annually on the 1st day of March, to wit, to the Jacksonville, Alton & Saint Louis Railroad Company, on their
564 repaying to this county the interest heretofore paid to them, $50,000 in 100 county bonds, No. 1 to 100, payable to said company and redeemable 1st March, A. D. 1874, and $50,000 in 100 other county bonds, No. 1 to 100, payable to said company and redeemable 1st March, 1877, and to the Tonica and Petersburg Railroad Company, $50,000 in 100 other county bonds, No. 1 to 100, payable to said company and redeemable 1st March, 1877, each of said bonds being for $500, redeemable as aforesaid at the American Exchange Bank in the city of New York, and the interest (payable as aforesaid at the same place) being satisfied in coupons attached to said bonds;

And whereas the Illinois River Railroad Company has actually undertaken and is now proceeding with the construction of so much of said last mentioned railroad as extends from Pekin, in Tazewell County, to Virginia, in Cass County, and R. S. Thomas, the president of said company, having certified to this court that said last mentioned company have placed their said railroad under contract to be completed by the first day of December, 1858, from Virginia, in Cass County, to Jacksonville, and that it is provided in the contract for the construction thereof that the Morgan County bonds shall be expended for work done in Morgan County and not elsewhere, and this county being satisfied that the interest and advantage of this county will be promoted by the de-
565 livery to the last mentioned company, as hereinafter provided, of the bonds heretofore subscribed by this county to the capital stock of said company:

It is ordered that there be delivered to the said Illinois River Railroad Company the amount of $50,000 in 100 bonds of this county of this date, No. 1 to 100, payable to said company, each bond being for $500, redeemable at the American Exchange Bank in the city of New York on the 1st day of March, A. D. 1877, each of said mentioned bonds to have coupons or interest warrants attached thereto for interest, payable annually from and after 1st March next, at 6 per cent. per annum.

It is further ordered that the certificates of stock in the several companies aforesaid belonging to the county of Morgan be deposited with the treasurer of the county for safe-keeping, and that one copy of the bonds delivered to each company as aforesaid be deposited with the county clerk and another with the county treasurer, to be carefully preserved in their respective offices.

STATE OF ILLINOIS,
Morgan County:

I, John Trabue, clerk of the county court in and for said county, do hereby certify that the foregoing are copies of the orders of the county court of said county in relation to the Illinois River Railroad Company, as appears to me of record in my office.

566 Given under my hand & the seal of said court, at Jacksonville, this the 6th day of October, 1862.

[L. S.] JOHN TRABUE, *Clerk.*

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, cl'k.

EXHIBIT Z.

The undersigned, trustees in the first mortgage of the Illinois River Railroad Company, being desirous to obtain a charter for incorporating the purchasers of the said railroad, do hereby stipulate that nothing in the act of incorporation which may be passed by the legislature shall in any way affect the title or right of the trustees or bondholders or any creditors of said railroad company or any person having claim or right to the whole or any portion of $50,000 of Morgan County bonds now in litigation in the circuit court of Morgan County, but the right and title to said bonds shall be left to be decided in the suit now pending in the said suit in the Morgan County circuit court.

June 5th, 1853.

LUCIUS HOPKINS,
A. STUDWELL,
Trustees of the Ills. R. R. Road Co.

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, cl'k.

567 EXHIBIT A A.

AMERICAN HOUSE, *Springfield, Jan.* 31, 1862.

The board met pursuant to adjournment.

Present, R. S. Thomas, president; B. S. Prettyman, V. president; Wm. Thomas, director, & M. H. L. Schooley, secretary.

The minutes of the proceedings of the last meeting of the board were read and approved.

And thereupon R. S. Thomas, president and general superintendent for the company, presented to the board a detailed statement in writing of his receipts and disbursements as such president and superintendent (not heretofore passed upon and settled by the board), together with the vouchers taken by him for such disbursements, and also his charges for salary as president and superintendent, &c., &c., which statement and vouchers being examined and compared were found to be correct and approved by the board, and the charges of said president and superintendent for salary, interest, &c., &c. contained in said statement were also approved and allowed; and it was therefore found & decided by the board that the company is indebted to said R. S. Thomas (in addition to the $3,735.50 of the company's drafts he now has), the sum of twelve thousand seven hundred and sixty-six dollars and seventy-two cents ($12,766.72). And therefore the following order was made by the vote of a majority of the board, the said R. S. Thomas not voting
568 on the passage of the order, viz:

On motion, it is ordered that Richard S. Thomas be allowed and paid out of any funds belonging, or due to, or that may belong or become due to this company (in addition to the $3,395.75 allowed him Decem. 3d, 1860, for cash advances, for which aggregate sum he has the company's drafts, and $339.77 in other drafts of the company which he now has), the sum of twelve thousand and seven hundred and sixty-six dollars and seventy-two cents ($12,766.72), which last sum is this day found by the board to be due to him from the company, upon examination and approval of his accounts and vouchers as president of and general superintendent for the company; and the secretary is directed to issue a draft or drafts in favor of said Thomas, at his request, for all or any part of said sums allowed and due as above, which drafts may be drawn upon the treasurer of the company or upon any person or persons according to the request of said Thomas, who may have or be supposed by him to have any of the company's funds, bonds, or money in his or their possession; or if said Thomas prefers it, he may omit taking any draft, and this order or certified copy of this order, or the secretary's certificate founded upon this order for all or any parts of the amounts due to said
Thomas as above stated, shall be complete evidence of the com-
569 pany's indebtedness to him for the amounts stated in such order or certificates to be due to him; and it is hereby decided, ordered, and agreed that the whole amount now due from the company to said Thomas as specified in this order, (on the settlement of to-day and drafts he now has), to wit, $16,502.24 (sixteen thousand five hundred and two dollars and twenty-four cents), shall draw ten per cent. interest per annum from this date, which interest shall become due and be paid at the end of each year from this date; and in case of drafts or certificates being issued as herein provided they shall draw interest as above specified.

It is further ordered that said Thomas be and he is hereby authorized as president or superintendent to collect and take any funds, debts,

bonds, moneys, &c., belonging, or that may belong to, now due, or that may become due this company, and appropriate the same towards the payment of the above-named indebtedness & interest thereon, at the cash value thereof.

STATE OF ILLINOIS,
County of Cass:

I, Mahlon H. L. Schooley, secretary of the Illinois River Railroad Company, certify that the foregoing is a true copy of the proceedings and two orders had and made by the board of directors of the said company, at a meeting thereof held in Springfield on the 31st day of January,
570 A. D. 1862, as the same appear on record in the record book in my office containing the minutes of the proceedings of said board, after the same were corrected by said board at its meeting held at Virginia on the 12th day of July, A. D. 1862.

In testimony whereof I have hereto subscribed my name and affixed the seal of said company, at my office in Virginia, Cass County, Ill., this 31st day of July, A. D. 1862.

[L. S.] M. H. L. SCHOOLEY,
Sec'y I. R. R. R. Co.

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, clerk.

EXHIBIT B B.

At the March term of the county court for the county of Morgan, and State of Illinois, begun and held at the court-house in the city of Jacksonville, on Monday the 1st day of March, 1869, it being the first Monday in the month, sitting for the transaction of county business.

Pres. Hon. H. G. Whitlock, county judge.
" Stephen Dunlap, ass. "
" John Hardin, " "

And on Saturday, the 6th day of March, 1870, it being one of the days of said term, presiding as above, the following proceedings were had, to wit:

571 Ordered that the clerk of this court burn and destroy bonds No. 1 to 7, both inclusive; No. 1 with interest warrants from 1863 attached, & bonds from 2 to 7, inclusive, with warrants from 1862 attached, and, also, bonds from 55 to 60, both inclusive, with interest warrants attached from 1861. Said bonds being for five hundred dollars, and payable to the Illinois River Railroad Company or bearer, and taken up by said county and ordered to be cancelled; and it is also ordered, that said clerk cancel and burn interest warrants in said series of bonds taken up by said county from bonds No. 61 to 100, both inclusive, for the years 1861, 1862, 1863, 1864, 1865, 1866, 1867 & 1868, and the clerk having obeyed said requirements of the court, and burned said bonds and interest warrants in the presence of the court, it is further ordered, that said clerk enter on the register of said bonds on the records of said county the cancellation of the same of the interest warrants aforesaid.

STATE OF ILLINOIS,
Morgan County:

I, John Trabue, clerk of the county court in and for said county, do hereby certify that the foregoing is a correct copy from the records in this office.

Given under my hand & seal of office at Jacksonville, this 28th day of June, A. D. 1870.

[L. S.] JOHN TRABUE, *Clerk.*

572 (Endorsed:) Filed June 28th, 1870. Geo. W. Clark, clerk.

(Also, endorsed:) Filed Sept. 14th, 1876. J. A. Jones, cl'k.

EXHIBIT C C.

This agreement, made and concluded this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and fifty-eight, between the Illinois River Railroad Company, a body corporate, created under and by virtue of certain acts of the general assembly of the State of Illinois, party of the first part, and Alexander Studwell, of the city and State of New York, party of the second part, witnesseth:

That the said party of the second part, for and in consideration of the covenants and agreements hereinafter contained, on the part of the said party of the first, and by it to be well and truly kept, observed, fulfilled and performed, and of one dollar to him in hand paid by said party of the first part, the receipt whereof before the ensealing and delivery hereof is hereby acknowledged, hath covenanted and agreed, and hereby doth covenant and agree with the said party of the first part, in manner following, that is to say.

First. That he shall and will purchase, procure, and pay for, out of his own funds or means, seven thousand tons, of two thousand
573 and two hundred and forty pounds to the ton, of the very best quality of English or American rails, at his option, of eighteen feet length of English rail, with an average of not over ten per cent. of shorter bars, said rails to be what is generally known as the Erie pattern, and to weigh not less than fifty-four pounds to the lineal yard, and to be delivered free from duty and all charges for freight, either at the port of New York or at the port of New Orleans, at the option of the said party of the second part, or at any other port or ports which shall be designated or approved by George T. M. Davis, esqr., hereinafter named, and to be so delivered, one half thereof on the first day of March, 1859, and the other half part within sixty days thereafter, but said party of the second part may at his option so deliver the entire quantity of said rails at any time prior to the said first day of March, 1859. If the iron so purchased should be American instead of English manufacture, then the length of the bars shall be at least twenty-one feet in length, with not less than ten per cent. of shorter lengths, and also that he shall and will procure, purchase, and pay for out of his own funds and means two hundred tons, of two thousand pounds to the ton, of the very best quality of railroad spikes of the best American iron; also forty-
574 eight thousand weight iron railroad chairs, equal in quality to those manufactured by the Albany Iron Works, and also all the iron switches and frogs which may be necessary to put the railroad of said party of the first part in operation, said spikes, chairs, switches, and frogs to be delivered in like proportions at the same time or times, and at the same post or posts or points as above provided in regard to the delivery of said iron rails.

Secondly. That he shall and will make all the said purchases of said rails, chairs, spikes, frogs, and switches through or with the approval of George T. M. Davis, of the city and State of New York, the agent of the said party of the first part for such purposes, but with the understanding on the part of both parties to this agreement that no purchase

of any part of said seven thousand tons of iron shall be made by or through said Davis of any brand or manufacture, English or American, which shall not be first approved by said party of the second part, but that none but the very best quality of railroad iron shall be purchased either with or without the approval of said party of the second part, said Davis to render said services last aforesaid free of all charges or expense to said party of the second part.

Thirdly. That he shall and will, with or out of the proceeds of
575 the mortgage bonds to be paid or delivered to him under this agreement as hereinafter mentioned, pay, satisfy, and discharge all claims and demands of the three trustees named in the first mortgage, made to secure the payment of said mortgage bonds for their compensation or for their services rendered or to be rendered as such trustees; and shall and will hold and keep said party of the first part indemnified against all costs and charges arising or to arise out of or from any services rendered or to be rendered by said trustees or any or either of them under said first mortgage.

Fourthly. That he shall and will accept the office and perform the duties of permanent treasurer of said party of the first part as hereinafter provided. And shall and will also perform the duties of financial agent of the said party of the first part, in the city of New York, during the term of said first mortgage bonds have to run or until the same are sooner fully paid off or redeemed. And that he shall and will, as such financial agent, pay with and out of the funds or means of the said party of the first part in the said city of New York all coupons upon the first or second mortgage bonds of the said party of the second part from time to time as the same shall mature and become due and
576 payable, at the Importers and Traders' Bank in the said city of New York, where all said mortgage bonds, both principal and interest, are to be made payable, and that he shall and will render and perform all said services as permanent treasurer and financial agent as aforesaid, or incident to said office, free of all charges or commission whatever for such services; and that he shall and will indemnify and hold harmless said party of the first part against all charges or commission whatever, by or on behalf of said Importers' and Traders' Bank, for its services in paying any of said mortgage bonds or any of the coupons thereon, or on account of the same being paid at or by said bank, the said party of the first part having fully paid and remunerated the said party of the second part for all services rendered or to be rendered by him as aforesaid, either as such permanent treasurer or as such financial agent, during the whole period said first mortgage bonds have to run, or until they are fully redeemed or paid; but it is understood that said party of the first part shall provide and furnish in the said city of New York, the funds necessary to enable said party of the second part from time to time to pay the coupons on all its said mortgage
577 bonds as the same shall mature and become payable at said Importers and Traders' Bank, and that the said party of the second part shall and will faithfully perform the duties incident to said office of permanent treasurer and financial agent as hereinafter or hereinbefore designated, and shall and will apply and use the funds and monies which shall come to his hands as such officer only for the purposes hereinafter specified, and shall and will render to said party of the first part true and full accounts of all such funds and moneys, and as to the disposition made of the same, from time to time, as shall be required by said party of the first part.

Fifthly. That he shall and will take and receive from said party of the

first part six hundred first-mortgage bonds of one thousand dollars each, and six hundred first-mortgage bonds of five hundred dollars each, secured as hereinafter mentioned, in the aggregate amounting to nine hundred thousand dollars, at par, as and in full payment of all the rails, spikes, chairs, frogs, and switches, so to be by him furnished, purchased, and delivered as aforesaid, and in discharge of all his claims and charges thereon, and also as and in full payment and discharge of all claims or demand for all the services which as permanent treasurer or as financial agent as aforesaid he is to give and render as hereinbefore or
578 as hereinafter stated, covenanted, and agreed, and upon receiving said first mortgage bonds, amounting in the aggregate at par to nine hundred thousand dollars, that he will execute and deliver to said party of the first part full and sufficient acquittances and discharges for said rails, spike', chairs, frogs, and switches, and for said services so to be rendered by him, as above stated.

And the said party of the first part, for and in consideration of the aforesaid covenants, agreements, and undertakings, and of one dollar to it in hand paid by said party of the second part, the receipt whereof, before the delivering hereof, is hereby acknowledged, has covenanted and agreed and hereby doth covenant and agree to and with the said party of the second part in manner following, that is to say:

First. That said Illinois River Railroad Company shall and will with its own means already provided, or hereinafter to be provided, from sources other than by the sale or negotiation of any of its mortgage bonds hereinafter mentioned, construct or complete its entire road, between the junction of the Peoria and Hannibal Railroad, in Peoria County, and Jacksonville, in Morgan County, including the construction of a bridge across the Illinois River, and all other bridges and trestle
579 work, ready for the rails or superstructure, and that said entire road shall be so constructed, completed, finished, and paid for without any resort to sales or other negotiations of its mortgage bonds hereinafter mentioned, and shall be so constructed and completed that it shall not owe or be indebted one dollar for construction or otherwise, except in the amount of and for its mortgage bonds, hereinafter mentioned, and which are to be used or issued only for the purposes hereinafter specified.

Secondly. That said Illinois River Railroad Company shall and will issue seven hundred and twenty bonds of $1,000 each, and six hundred bonds of $500 each, in the aggregate amounting to $1,020,000$^{00}_{100}$, and no more, all said bonds to be made payable on the first day of January, 1880, and to be on interest at the rate of ten per cent. per annum, payable semi-annually on the first day of July and January each year, and all said bonds, both principal and interest, shall be made payable at the Importers and Traders' Bank in the city of New York, and that said bonds shall be known and denominated first mortgage bonds, and that the same shall be drawn in such form, with such provisions and statements therein, as shall be directed or approved by John Cleavland, esquire, of the city of New York, and shall have coupons or in-
580 terest warrants thereunto annexed, but that none of such bonds shall draw or bear interest until on and after the first day of July, 1859, and the first coupons thereon shall become due and payable January 1st, 1860.

Thirdly. That said Illinois River Railroad Company shall be a good and sufficient mortgage or deed of trust to be drawn or approved by said John Cleavland, esq., convey to Lucius Hopkins, George T. Cobb, and Alexander Studwell, all of the city and State of New York, and to

the survivors or survivor of them, his or their assigns, all and singular the real estate, railroad, and property of every kind and description, acquired and to be acquired by it, as security for the payment of said issue of first-mortgage bonds, amounting to the sum of $1,020,000, and no more, and that said mortgage or deed of trust shall be so executed and recorded in the several counties through which said road runs as to be a valid and effectual conveyance of and a first lien upon all said railroad, and upon all the property, real, personal, and mixed of said Illinois River Railroad Company, and upon its franchises and effects, acquired and to be acquired, and that said mortgage or deed of trust shall contain such and so many of the following pledges, provisions, agreements, and covenants as shall be required by said George T. M. Davis, namely:

581 1. That the entire net earnings and receipts of said railroad during the time said first mortgage bonds have to run, or until the same are paid off and redeemed, are and shall be irrevocably pledged and applied to and for the following purposes, viz:

First. That ten per cent. of such annual net earnings and receipts shall be paid over to said permanent treasurer for the purpose of creating a fund to be known as the "depreciation fund," and which is to be applied by such permanent treasurer in keeping the rails and ties in constant working order, and in meeting any extraordinary outlay in repairs of the track, bridges, and tressel work, rendered necessary by any unfor'seen accident or casualties.

Secondly. That so much of said annual net earnings and receipts as is necessary for such purpose shall be paid over to said permanent treasurer, to be by him applied in payment of the coupons upon the said first mortgage bonds, as the same shall become due and payable.

Thirdly. That so much of said net annual earnings and receipts as are necessary for such purpose shall be paid over to said perma-

582 nent treasurer, to be by him applied in payment of the coupons upon certain second-mortgage bonds hereinafter specified, as the same shall become due and payable; and fourthly, that the entire residue of said annual earnings and receipts, during the time said first-mortgage bonds have to run, and until they are fully paid off and redeemed, shall be paid over to said permanent treasurer semi-annually or oftener for the purpose of creating a fund to be known as a "sinking fund," to be applied to and in the redemption of said trust-mortgage bonds as hereinafter mentioned. But it is understood that the first payment to said sinking fund shall be made on the first day of July, 1860, and the first payment to the depreciation fund shall be made on the first day of January, 1860.

2. That the trustees therein shall be imperatively required at the end of each year to redeem so many of said first mortgage bonds, at their par value or at a less rate, as said "sinking fund" will furnish the means so to redeem, and if the holders refuse or neglect to surrender a sufficient amount of said first mortgage bonds to exhaust said annual sinking fund, then that said trustees shall be compelled to determine by lot,

583 in some fair and impartial manner, which of said first mortgage bonds shall be so redeemed, all the provisions of said mortgage or deed of trust in relation to the mode and manner of thus determining by lot or otherwise which of said first mortgage bonds shall be so redeemed by the sinking fund to be drawn by said John Cleavland, esq're, and approved by said George T. M. Davis.

(3.) The said first mortgage bonds and said first mortgage or deed of trust shall respectively contain provisions, stipulations, or conditions in

substance and effect as follows, to wit: that if said Illinois River Railroad Company shall for the space of thirty days make default in the payment of the semi-annual interest upon its said first mortgage bond' or shall fail to pay over as aforesaid, or otherwise cause to be applied ten per cent. of the net annual earnings and receipts of its railroad to said "depreciation fund," or shall fail to pay as aforesaid the entire residue of its net annual earings and receipts to said "sinking fund" after first applying only so much of said residue as may be necessay to pay the interest on certain second mortgage bonds hereinafter specified, then and in either of said cases, after the lapse of said thirty days, the
584 whole principal sum of each of said first mortgage bonds shall become immediately due and payable, and it shall be the duty of said trustees, upon request of the holders of any two or more of said first mortgage bonds, to foreclose such mortgage or deed of trust, and to pay all said first mortgage bonds, bo h principal and interest, in full out of the proceeds of the sale of said corporate property, franchises, and effects.

(4.) That said Illinois River Railroad Company shall and will within sixty days after the date hereof make a contract or running agreement for the term of twenty years, or until said first mortgage bonds shall be fully paid off or redeemed with the Chicago and Rock Island Railroad Company, which contract between said two railroad companies shall be drawn or approved by said George T. M. Davis, and shall provide for the furnishing of the rolling stock necessary to run and operate the railroad of said parties of the first part hereto, and for the payment of its net earnings and receipts to the party of the second part hereto as permanent treasurer as aforesaid, or to said Importers and Traders
585 Bank, and shall also contain such other provisions and stipulations as shall be required by said George T. M. Davis, and when so approved shall be deemed a part of this agreement.

(5.) That said Illinois River Railroad Company shall and will within sixty days of the date hereof, or within such shorter time as shall be required by said Davis, cause its board of directors to be formed or reorganized so that the honorable William Thomas, of Jacksonville, or some other equally unexceptionable resident stockholder of said Jacksonville, shall be duly appointed one of its directors, and so that Henry Farnham, the president of said Chicago and Rock Island Railroad Company, shall be duly appointed another of its directors, and that said board, when so reorganized, shall elect and continue from year to year to elect or appoint R. S. Thomas president of said Illinois River Railroad Company, with whom the said party of the second part has been negotiating for the last six months, and in whom he has the most unlimited confidence, or shall elect said Henry Farnham such president; and in order to carry this stipulation into full effect, the performance of which is insisted upon by said party of the second part as a condition precedent to his providing the funds and making the advances aforesaid,
586 it is hereby further agreed by and on the part of the Illinois River Railroad Company that a majority of all the shares of its capital stock now subscribed or hereafter to be subscribed shall in such mode and manner and upon such terms and conditions as shall be prescribed or approved by said George T. M. Davis be so transferred, kept, or held during the time said first mortgage bonds have to run, or until the same are fully paid off or redeemed, that the person or parties holding the same can and shall lawfully vote upon the same at such annual meeting for the election of directors, held or to be held during the time last aforesaid, or until said mortgage bonds are fully paid or redeemed.

and so that the person or parties so holding a majority of said shares shall at each of said annual elections during the time last aforesaid cast all the votes to which said shares are entitled for the five members of the board of the present year after such reorganization as aforesaid, or for such other persons as shall be approved of by said party of the second part, provided always that the directors so chosen shall be so distributed as to secure to each of the four counties through which said railroad runs a resident director.

587 (6.) That the said Illinois River Railroad Company shall and will in due and legal manner and form, and by proper corporate resolutions and proceedings, appoint the superintendent for the time being of the Chicago and Rock Island Railroad Company the superintendent of the Illinois River Railroad Company, to hold said office during the time said running arrangement between said two railroad companies shall continue in force, and shall in like manner duly appoint said party of the second part hereto its permanent president and financial agent, in the city of New York, to hold and to perform the duties incident to such offices, during the term said first mortgagebonds have to run, or until the same are paid off or redeemed.

And it is further mutually agreed between the parties hereto as follows:

First. That said Illinois River Railroad Company shall have the right to issue certain other mortgage bonds, to be called second mortgage bonds, and to secure such issue by a second mortgage upon its real and personal property, franchises, and effects, that such issue of second mortgage bonds shall not be made payable before January

588 1st, 1881, and shall not exceed in amount $280,000 so long as said outstanding first mortgage bonds amount to $1,020,000, but said issue of second mortgage bonds may be increased from time to time and so fast as said first mortgage bonds are paid off or redeemed, it being understood and agreed that at no time shall there be outstanding an aggregate amount of first and second mortgage bonds exceeding $1,300,000.

Secondly. That so long as any of said first mortgage bonds are outstanding said second-mortgage bonds shall be issued, hypothecated, or otherwise negotiated by said Illinois River Railroad Company only for the following purposes, viz, to raise money to be applied in the purchase of rolling stock for its road, or to be applied in payment of interest upon its mortgaged bonds, or to be paid over to said "sinking fund" to be applied in the redemption of its first-mortgage bonds, or to making repairs on its roads, rendered necessary by extraordinary or unforseen casualties by flood, fire, or otherwise.

Thirdly. That said Illinois River Railroad Company shall use said one hundred and twenty thousand dollars of first-mortgage bonds,

589 which shall remain after so many thereof as shall amount to $900,000 have been delivered to said party of the second part, as therein provided, only for the following purposes: First, for the purpose of paying commissions to the said George T. M. Davis for making the negotiation hereby made; secondly, for the purpose of raising the means necessary to pay freight and insurance upon the rails, spikes, chairs, frogs, and switches aforesaid, and to pay for laying and distributing the iron, and for the track of said railroad; thirdly, for the purpose of raising means to pay from time to time any and all arrears upon said first mortgage bonds; and, fourthly, for the purpose of defraying the

expenses incident to such ballasting of said railroad as shall be required for its safe operation.

Fourthly. That said Illinois River Railroad Company shall and will within sixty days after the date hereof deposit in escrow with the American Exchange Bank in the city of New York six hundred first-mortgage bonds of $1,000 each, and six hundred first-mortgage bonds of $500 each, secured as aforesaid, and amounting in the aggregate to $900,000 at par, and hereby sold to said party of the second part, with authority to the said, the American Exchange Bank, from time to time, to deliver the same to the said party of the second part upon the written order of said George T. M. Davis as agent of said party of the first part hereto; and that said Davis shall give such written orders from time to time, and so fast as he shall receive from said party of the second part invoices for said rails, chairs, spikes, frogs, and switches duly rece'pted, and of the quality herein provided, and that said Davis shall specify in each written order he shall give the number and amount of the first-mortgage bonds, which said, the American Exchange Bank is to hand over or deliver to said party of the second part, and that each written order shall direct the delivery of such a pro rata proportion of said bonds as the respective invoices shall bear to the whole number of bonds so deposited. And each written order shall specify the quantity of rails, spikes, chairs, &c., delivered to said Davis, and for which the said orders were given. But it is understood that in case of the death or absence of said George T. M. Davis that the said, the American Exchange Bank, shall be authorized and bound to deliver said bonds to said party of the second part upon the like written orders of John Cleavland, esq're, of the city of New York, to whom said party of the second part shall deliver said invoices in like manner as to said Davis.

590

591

Fifthly. It is hereby further mutually agreed between the parties hereto that said party of the second part shall, as permanent treasurer of said party of the first part, deposit all moneys which shall come to his hands immediately upon receiving the same with the said Importers and Traders' Bank to his credit as permanent treasurer of the Illinois River Railroad Company, and that said contract or running arrangement, made or to be made as aforesaid, with the Rock Island Railroad Company, shall provide in a way to be approved of by said George T. M. Davis, that all the net earnings and receipts of the railroad of said party of the first part, including any drawback allowed, shall be paid over or deposited by said Rock Island Railroad Company to the said Importers and Traders' Bank to the credit of Alexander Studwell, permanent treasurer of the Illinois River Railroad Company, and the receipts of the president or cashier of said bank shall be full and sufficient acquaintance and discharge therefore to the said Rock Island Railroad Company, and that said Importers and Traders' Bank shall pay out said moneys so to be deposited with it only upon checks drawn by said Alexander Studwell, permanent treasurer of the Illinois River Railroad Company, for one or more of the purposes herein specified, payable to the order of the president, for the time being, of said Importers and Traders' Bank, and by him endorsed; but it is *argued* between the parties hereto, in case and immediately upon the death of said party of the second part, that Lucius Hopkins and George T. Cobb, trustees above named, or the survivor of them, shall have the power to draw out of said Importers and Traders' Bank all moneys then on deposit with them to the credit of said permanent treasurer as aforesaid, upon checks drawn by them or by the survivor of them, payable to the

592

order of the president, for the time being, of said bank, and to apply such moneys to and for any of the purposes herein specified.

And it is further agreed that not exceeding $25,000 shall, for the space of more than sixty days, ever remain on deposit in said bank to the credit of said permanent treasurer unappropriated by him to one or more of the purposes herein specified, unless with the consent of
593 the president, for the time being, of said party of the first part.

It is further understood that all the duties of said party of the second part as permanent treasurer and financial agent as aforesaid, shall wholly cease when and so soon as said first-mortgage bonds shall be paid off. It is further understood that the two hundred tons of spikes, so to be furnished as aforesaid, shall be of the best American iron of 5½ by $\frac{9}{16}$", and said chairs so to be furnished as aforesaid shall be "7 × 7" and half an inch thick, and to weigh at least seven pounds to the chair.

Lastly, it is hereby mutually agreed by and between the parties hereto that in case any controversy or difference of opinion shall arise between them as to the purport, meaning, and intent of any of the covenants or provisions contained in this agreement, or as to the mode or manner of executing the same, or as to the carrying the same into effect, that then and in every such case with each other to submit such controversies or difference of opinion to said George T. M. Davis, and this his decision thereon shall be final and binding upon both the parties hereto.

In witness whereof the said party of the second part and the said Illinois River Railroad Company, the said party of the first part, by R. S. Thomas, its duly authorized agent and attorney in fact, have
594 severally signed their respective names the day and year first above written.

ILLINOIS RIVER RAILROAD COMPANY,
By R. S. THOMAS,
Agent and Attorney in Fact.
A. STUDWELL.

Signed and delivered in presence of—
GEORGE MARSHALL.

(Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, clerk.

EXHIBIT D D.

STATE OF ILLINOIS,
Morgan County:

I, Samuel M. Martin, clerk of the county court, do hereby certify that on the 16th day of December, 1875, I delivered to William Thomas for M. H. L. Scholey and Benjamin West, eight (8) bonds of the Illinois River Railroad Company numbered from 64 to 71 inclusive, amounting to the sum of $4,000.00, and that I paid to said William Thomas the sum of $3,600.00, being the accrued interest at that time, and further, that on the same day I delivered to Henry Striker, jr., master in chancery, three (3) of said bonds numbered from 61 to 63 inclusive, with interest coupons from March, 1870, to March, 1877, being eight (8) coupons thereto attached.

In testimony whereof I have hereunto set my hand and official seal at Jacksonville, this 7th day of September, 1876.

[L. S.] SAMUEL M. MARTIN,
County Clerk.

595 (Endorsed:) Filed Sept. 14th, 1876. J. A. Jones, clerk.

EXHIBIT E E.

STATE OF ILLINOIS,
Morgan County, ss :

I, Samuel M. Martin, county clerk in and for said county, hereby certify that the following fees and costs were paid by Morgan County in the following cases, to wit: Morgan County vs. Allen et al. and William Thomas vs. Morgan County et al.

No. 7129	$250 00
7130	250 00
9044	98 00
9045	250 00
9046	250 00
9500	150 00
9501	150 00
9650	124 42
388	200 00
389	200 00
1990	120 14
	50 10
Total	$2,102 66

In testimony whereof I hereunto set my hand and official seal this 11th day of September, 1876.

[L. S.] SAMUEL M. MARTIN, *Clerk.*

(Endorsed :) Filed Sept. 14th, 1876. J. A. Jones, cl'k.

596 EXHIBIT 1.

Election notice

STATE OF ILLINOIS,
Morgan County :

Notice is hereby given that on Tuesday next after the first Monday of November next, in the precinct, in said county of Morgan, an election will be held—

For eleven electors of President & Vice-President of the United States.
" governor of the State of Illinois.
" lieutenant-governor " "
" secretary of state " "
" auditor of public accounts "
" treasurer "
" superintendent of public instruction.
" one Representative to Congress for the 6th district "
" one senator to the general assembly for the counties of Morgan and Sangamon.
For two representatives to the general assembly for the counties of Morgan and Scott.
For one sheriff for the county of Morgan.
" one coroner for the county of Morgan.
" one clerk of the circuit count of the county of Morgan.

And also "for" or "against" a subscription of fifty thousand
597 dollars in bonds of the county to the capital stock of each of the following railroad companies, to wit: To the Jacksonville and

Carrolton Railroad Company fifty thousand dollars in addition to the former subscription by the county; to the Illinois River Railroad Company fifty thousand dollars, and to the Tonica and Petersburg Railroad Company fifty thousand dollars; said bonds to be redeemable on the first day of March, 1877, to be issued as they may be required, and to bear interest at the rate of six per cent. per annum.

The opinion of the electors shall be expressed upon the ballots "For subscription" or "Against subscription," and counted and returned by the judges and clerks of elections as in other cases, and if a majority of the voters of the county, assuming as a standard the number of votes thrown at said election, and shall be in favor of the same, such authorized subscription will then be made by the judges of the county court pursuant to the statute in such cases made and provided.

The polls will be opened at 8 o'clock in the morning and will continue open until 6 o'clock in the afternoon of the same day.

598 Dated at Jacksonville this day of , in the year of our Lord one thousand eight hundred and fifty-six.

Clerk of County Court.

Abstract of votes given in the county of Morgan and State of Illinois "for subscription" and "against subscription" at the general election held on Tuesday the fourth day of November, one thousand eight hundred and fifty-six.

"For subscription," seventeen hundred and fifty-three votes were given (1,753).

"Against subscription," twelve hundred and ninety one votes were given (1,291).

The highest number of votes cast at said election for county officers was three thousand four hundred and ninety-nine (3,499).

Poll-books opened and abstract made in our presence at the clerk's office at Jacksonville this 7th day of November, A. D. 1856.

JAS. BERDAN,
County Judge & Ex Officio J. P.
STEPHEN SUTTON, *J. P.*

599 STATE OF ILLINOIS,
Morgan County, ss:

CLERK'S OFFICE, COUNTY COURT,
Jacksonville, November 7, 1856.

I, Mathew Stacy, clerk of the county court within and for the county and State aforesaid, do certify that the foregoing is a correct statement of the votes cast "for subscription" and "against subscription" at an election held in the several precincts in the county of Morgan, on Tuesday, November 4th, A. D. 1856.

In testimony whereof I hereunto set my hand and affix the seal of said court at my office in Jacksonville, this 7th day of November, A. D. 1856.

[SEAL.] MAT. STACY,
County Clerk.

At the December term of the county court of the county of Morgan and State of Illinois, begun and held at the court-house, in the town of Jacksonville, on Monday, the first day of December, A. D. 1856, being the first Monday in the month for the transaction of county business.

600 Pres., Hon. James Berdan, county judge; J. R. Bennett, associate justice: John B. Duncan, associate justice.

And afterwards, to wit, on the 5th day of December, A. D. 1856, it being one of the days of the aforesaid December term, 1856, the following among other proceedings were had and entered of record, to wit:

FRIDAY MORNING, *December 5th*, 1856.

Court met pursuant to adjournment.

Pres., Hon. James Berdan, county judge; J. R. Bennett, associate: J. B. Duncan, associate.

Whereas at the general election held at the several precincts of this county on Tuesday, the fifth day of November last, it appears by the official abstract of the returns of said election that the whole number of votes cast for *for* county officers was 3,499, and at the said election there was cast 1,753 votes for subscription of fifty thousand dollars in bonds of the county to the capital stock of each of the following railroad companies, to wit: The Jacksonville and Carrolton Railroad Com-
601 pany, fifty thousand dollars, in addition to the former subscription by the county; to the Illinois River Railroad Company, fifty thousand dollars; and to the Tonica and Petersburg Railroad Company, fifty thousand dollars (said bonds to be redeemable on the first day of March, 1877, to be issued as they may be required and to bear interest at the rate of six per cent. per annum); and the votes so cast for subscription being a majority of the votes cast for county officers at said election:

Now, on the application of Richard Yates and Joseph J. Cassell, acting for and in behalf of the railroad companies aforesaid, it is ordered that the sum of fifty thousand dollars in bonds of this county, redeemable, issuable, and payable with interest as aforesaid, be, and the same hereby is, subscribed to the capital stock of the Jacksonville and Carrollton Railroad Company, in addition to the former subscription by this county to said capital stock; and the like sum of fifty thousand dollars in like bonds is also hereby subscribed to the capital stock of the Illinois River Railroad Company; and the like sum of fifty thousand dollars in like bonds is also hereby subscribed to the capital stock of the Tonica and Petersburg Railroad Company.

And it is further ordered that James Berdan, county judge, be
602 authorized and empowered to act with regard to such subscriptions as may be necessary according to the charters, rules, or by-laws of the respective companies to perfect the same, to represent the county as stockholder in voting upon the stock, and to provide for the issuing and delivery of the bonds aforesaid as they may be required.

At the September term, A. D. 1857, of the county court of Morgan County, and State of Illinois, begun and held at the court-house, in the town of Jacksonville, in said county, on Monday, the 7th day of September, A. D. 1857, being the first Monday in the month, for county business.

Pres., Hon. James Berdan, county judge; John B. Duncan, associate; Isaac R. Bennett, associate.

And afterwards, to wit, on the 10th day of September, A. D. 1857, it being one of the days of the aforesaid September term, 1857, the following, among other proceedings, were had, and entered of record as follows, to wit:

Whereas it is provided in and by an act of the general assembly of

the State of Illinois, entitled "An act to facilitate the con-
603 struction of railroads," approved March 1st, 1854, that any city or county in this State, which, under the provisions of an act entitled "An act supplemental to an act entitled 'An act to provide for a general system of railroad incorporations,'" approved November 5th, 1849, has heretofore subscribed or may hereafter subscribe for stock in railroad company, payable in the bonds of said city or county, it shall be lawful for the city council of such city, or the judges of such court, and they are hereby authorized and empowered to issue and deliver to such railroad company the whole or any portion of the bonds of such city or county, payable on such subscription at any time hereafter when, in their opinion, the interest of such city or county will be promoted thereby, whether the assessments upon the stockholders of said company have been regularly assessed and made payable or not.

And whereas the Jacksonville, Alton & St. Louis Railroad Company, and also the Tonica & Petersburg Railroad Company, have actually undertaken and are now proceeding with the construction of their respective works within this county, and this court is satisfied that the delivery to those companies respect*fully* of the full amount of county bonds
604 hereafore subscribed by the county to the capital stock of said companies, to wit, to the Jacksonville, Alton and Saint Louis Railroad Company, of bonds to the amount of $100,000, and to the Tonica & Petersburg Railroad Company, of bonds to the amount of $50,000, will greatly facilitate the speedy completion of the roads so being constructed, and be for the interest and advantage of the county, it is ordered that there be now delivered to said companies, respect*fully*, bonds of this county of this date, payable as hereinafter mentioned, and bearing interest at six per cent. per annum, payable annually on the first day of March, to wit, to the Jacksonville, Alton & St. Louis Railroad Company (on their repaying to this county the interest heretofore paid to them), $50,000 in 100 county bonds, No. 1 to 100, payable to said company and redeemable 1st March, A. D. 1874; and $50,000 in 100 other county bonds, No. 1 to 100, payable to said company and redeemable 1st March, A. D. 1877; and to the Tonica and Petersburg Railroad Company $50,000 in 100 other county bonds, No. 1 to 100, payable to said company, and redeemable 1st March, 1877; each of said bonds
605 being for $500, redeemable as aforesaid, at the American Exchange Bank, in the city of New York, and the interest (payable as aforesaid at the same place) being specified in coupons attached to said bonds.

And whereas the Illinois Railroad Company has actually undertaken and is now proceeding with the construction of so much of said last mentioned railroad as extends from Pekin, in Tazewell County, to Virginia, in Cass County; and R. S. Thomas, the president of said company, having certified to this court that said last mentioned company have placed their said railroad under contract to be completed by the first day of December, 1858, from Virginia, in Cass County, to Jacksonville, and that is provided in the contract for the construction thereof that the Morgan County bonds shall be expended for work done in Morgan County, and not elsewhere; and this court being satisfied that the interest and advantage of this county will be promoted by the delivery to the last mentioned company, as hereinafter provided, of the bonds heretofore subscribed by this county to the capital stock of said company it is ordered that there be delivered to the said Illinois River
606 Railroad Company the amount of $50,000, in 100 bonds of this county of this date, No. 1 to 100, payable to said company, each

bond being for $500, redeemable at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1877, each of said mentioned bonds to have coupons or interest warrants attached thereto for (interest payable annually from and after 1st March next, at 6 per cent. per annum).

It is further ordered that the certificates of stock in the several companies aforesaid, belonging to the county of Morgan, be deposited with *with* the treasurer of the county for safe-keeping, and that one copy of the bonds delivered to each company as aforesaid be deposited with the county clerk and another with the county treasurer, to be carefully preserved in their respective offices.

At a called term of the county court, held in pursuance of the call issued by the presiding judge of this court at the court-house in the town of Jacksonville, county of Morgan, and State of Illinois, on this 10th day of April, A. D. 1858.

Present:

" Joseph J. Cassell, county judge.
" A. J. Thompson, associate "
" G. B. Waller, " "

607 It is hereby ordered that Joseph J. Cassell, the county judge of this county, be, and he is hereby, authorized and empowered to represent the stock held by the county of Morgan, and each of the following railroad companies, to wit: The Jacksonville, Alton and Saint Louis Railroad Company, the Illinois River Railroad Company, and the Tonica and Petersburg Railroad Company, and he is hereby authorized to cast the vote of the county, representing their stock, at any election that may hereafter be held by either of said companies for election of directors thereof, or in any other cause where the interest of the county needs protection.

At the March term of the county court within and for said county, begun and held at the court-house in Jacksonville on the first Monday of March, 1860, being the 5th day of the month, for the transaction of county business.

Present, Hon. Joseph J. Cassell, county judge.
" Andrew J. Thompson, associate.

608 And afterwards, to wit, on the 9th day of March, 1860, it being one of the days of the aforesaid March term, 1860, of said court, the following, among other proceedings, were had and entered of record.

FRIDAY MORNING, *March 9th*, 1860.

Court met pursuant to adjournment.

Present, Hon. Joseph J. Cassell, county judge, A. J. Thompson, associate, G. B. Waller, associate.

Thomas J. Caldwell, county treasurer, this day returned into court 100 interest-warrants from 1 to 100, inclusive, detached from the $50,000 of the bonds of the county of Morgan issued to the Illinois River Railroad Company, said interest-warrants being for the interest due upon said bonds on the first day of March, A. D. 1860. He also returned two interest-warrants, No. 3 & 89, detached from the bonds of the county of Morgan of similar numbers issued to the Jacksonville, Alton and Saint Louis Railroad Company, the principal of which matures on the 1st of March, 1874, the interest-warrants due the 1st March, 1860. He also returns into court fifteen interest-warrants numbered 1, 7, 8, 9, 90, 91,

92, 93, 94, 95, 96, 97, 98, 99, 100, detached from bonds of like
609 numbers issued to same company, the principal of which is due

on the 1st March, 1877, the interest warrants due March 1st, 1860. He also returned into court five interest-warrants, No. 6, 9, 12, 43, & 44, detached from the bonds of like number issued to the Tonica and Petersburg Railroad Company for interest due on the first of March, 1860, all of which are passed to his credit in his a/c rendered this day, and burned in open court.

At the June term of the county court for the county of Morgan, and State of Illinois, begun and held at the court-house in the town of Jacksonville on Monday, the 4th day of June, 1866, it being the 1st Monday in the month, sitting for the transaction of county business.

Present, Hon. Herbert G. Whitlock, county judge.
" " Stephen Dunlap, ass. "
" " John Hardin " "

The court was opened in due form by the sheriff of said county.

And afterwards, to wit, on the 9th day of June, 1866, it being one of the days of the aforesaid June term, 1866, of said court, the following, among other proceedings, were had and entered of record:

610 SATURDAY, *June 6th*, 1896.

Court met pursuant to adjournment.
Present, Hon. Herbert G. Whitlock, county judge.
" John Hardin, associate "
" Stephen Dunlap " "

Whereas the circuit court of the county of Morgan, and State of Illinois, at a special chancery term thereof held on the 28th day of May, 1866, an order was made in the case of Henry T. Thomas, adm't'r, &c., vs. Morgan County et el., which order and decree was and is in the words and figures following, to wit:

Circuit court Morgan County, State of Illinois, May special term, 1866.
In chancery.

HENRY THOMAS, ADM'T'R OF THE ESTATE OF Richard Thomas, dec'd,
vs.
MORGAN COUNTY ET AL.

And now on this 28th day of May, A. D. 1866, came Isaac Vail, by his solicitor, Henry E. Dummer, and Wm. M. Dodge, adm't'r of,
611 &c., of the estate of Joseph Ladd, dec'd, by his solicitor, H. B. McClure, and filed in this case the final order of the supreme court of the State of Illinois, made at the January term thereof, 1866, reversing the decree rendered in this case as to the said Vail and the said Dodge, adm't'r, and remanding the case for a decree in this case in pursuance to the directing in the opinion of the said supreme court, and the said Morgan County, appearing by her solicitor, and this cause coming on for final hearing, and it appearing to the court that there is due to the said Dodge, adm't'r, &c., from the said Illinois River Railroad Company on said judgment the principal amount of $1,567.38, and for interest 3 years 6½ months at 6 per cent., the sum of $333.06, and for costs expended $12.75, making due him from said railroad company $1,913.19; and it also appearing that there is due to the Isaac Vail from said Railroad company the principal amount of said judgment, $4,180.18, with interest at 6 per cent. from Oct. 22, 1862, three years and 7 months, $898.73, for costs expended in said case $16.00, making

in all the sum of $5,094.91; and this cause coming on to be heard
612 upon the question of the marketable value of said bonds, referred to in the said opinion of the said supreme court and in this case, and the court having heard the evidence taken in open court, finds from the same that the marketable value of said bonds is forty cents to the dollar, is the par value of the same: it is therefore ordered and decreed by this court, by consent of the said Isaac Vail and the said William Dodge, adm't'r, &c., and also by the said Morgan County, that the said county pay to the said William M. Dodge, adm't'r, &c., or his solicitor for him the said sum of $1,913.19 in cash in five days from the date of this decree, and take receipt for the same, and upon payment of the same and presentation of the said receipt to the custodian of said bonds he, said custodian, Marshall P. Ayers & Co., is ordered and directed to deliver to the said county of Morgan the sum of $4,782.97 of the said bonds in par value thereof and to take the receipt for the same.

And it is further ordered, by consent, that the said county of Morgan be substituted to all the rights of the said William M. Dodge, adm'tr, &c., in and to the said judgment, interest, and cost aforesaid against the said Illinois River Railroad Company, under and by
613 virtue of said judgment; and it is further ordered by consent that the said county pay to the said Isaac Vail, or to his att'y for him, within five days from the date of this decree, the said sum of $5,094.98, and take the receipt of said Vail for the same; that upon the payment of the same and the presentation of the receipt for the same that said Marshall P. Ayers & Co., custodian of said bonds, is directed to deliver to said county of Morgan $12,737.27 of said bonds in the par value of the same.

And it is further ordered by the court by consent that the said county of Morgan be substituted to all the rights of the said Isaac Vail under and by virtue of said judgment as against said Illinois River Railroad Company; and it is further ordered that the said custodian of said bonds file the receipt of the said county, or its agent for the said bonds, in this court in this case to the next term of this court; that the said Vail & Dodge recover costs in this case, and this case is continued.

To be recorded by consent, as of May 28th, 1866.

H. B. McCLURE,
614 *Solicitor for W. M. Dodge, Adm'r.*
H. E. DUMMER,
Solicitor for Isaac Vail.
MORRISON & EPLER,
For Morgan County.

STATE OF ILLINOIS,
Morgan County:

I, Stephen Sutton, clerk of the circuit court of Morgan County, and State of Illinois, do hereby certify that the foregoing pages contain a true and complete copy of a decree rendered by consent in the above entitled cause at the May special term of our said court.

Given under my hand and the seal of said court this 9th day of June, 1866.

[L. S.] STEPHEN SUTTON, *Clerk.*

It is therefore ordered by the county court that the county borrow the sum of seven thousand dollars for the term of one year, in order to enable the said county to comply with the terms of the decree in said
615 case, made by the said circuit court, at a rate of interest of not

exceeding ten per cent. per annum, and Mrs. Phoebe G. Strawn, having offered to take said loan at ten per cent. per annum, it is therefore that the clerk of this court draw an order in favor of the said Phœbe G. Strawn for seven thousand seven hundred doll's, payable one year after date, without interest, and deliver the same to the said Phœbe G. Strawn upon the receipt from her of the sum of seven thousand dollars.

And it is further ordered that the county judge of this court take said sum of seven thousand dollars and pay to said William M. Dodge, adm'tr, the said sum of $1,913.19 for his judg't, int., & costs mentioned in said decree of the said circuit court, and $14.72 for his costs, recovered by the said Wm. M. Dodge, adm't'r, in the supreme court of said State in said case, and that he take receipt of the said Dodge, adm't'r, or his solicitor, for the same.

And it is further ordered that the said county judge pay to Isaac Vail, or his attorney for him, in payment of his judg't referred to
616 in said decree and order, the sum of $5,072.09, the ballance of said loan from said Phœbe G. Strawn, and that the clerk then issue to the said Isaac Vail an order on the treasurer of this county for $60.82, being for the ballance due on said judg't, int., & costs, of twenty-two & $\frac{82}{100}$ doll's, & for $38.00 for the costs of said Vail, recovered in said case in the supreme court.

And it is ordered further that the county judge take the receipt of the said Isaac Vail, or of his solicitors, for said money so ordered to be paid, and that he present said receipts to M. P. Ayers & Co., referred to in said order and decree, and receive from them the number and amount of the bonds therein referred to from the said M. P. Ayers & Co., and that he receipt to the said M. P. Ayers & Co. for the same, and that he bring the said bonds into court to be cancelled, with the coupons or interest warrants attached.

And now on this 9th day of June, 1866, having brought into court of the said Illinois River Railroad bonds so called, dated Sept. 10th, 1857, each for $500, and numbered as follows, to wit: 8, 9, 10, 11, 12,
617 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 42, with the interest warrants attached, except warrants numbered 1, 2, & 3, heretofore detached and paid:

And it is now further ordered that the said several bonds and also the interest warrants to the same attached be cancelled by the county judge, and when so cancelled and deposited with the county treasurer by him to be kept subject to the order of this court.

And it is further ordered that the clerk of this court take copies of the receipts taken by the county judge from the said W. M. Dodge, adm't'r, and Isaac Vail, and file and preserve the same in his office.

2970. $7,700.00.

In pursuance of the foregoing it is ordered that Phebe G. Strawn be allowed and paid, one year from this date, the sum of seven thousand seven hundred dollars.

2971. $60.82.

Ordered, that Isaac Vail be allowed and paid sixty & $\frac{82}{100}$ doll's as per foregoing decree.

618 At the March term of the county court for the county of Morgan and State of Illinois, begun and held at the court-house, in the city of Jacksonville, on Monday, the first day of March, 1869, it being the first Monday in the month, sitting for the transaction of county business.

Pres., Hon. H. G. Whitlock, county judge.
" " Stephen Dunlap, associate judge.
" " John Hardin, " "
Court opened in due form.

And afterwards, to wit, on the 6th day of March, A. D. 1869, it being one of the days of the aforesaid March term, 1869, of said court, the following, among other proceedings, were had and entered of record, which are in words and figures following, to wit:

SATURDAY MORNING, *March 6th*, 1869.

Court met pursuant to adjournment.
Pres., Hon. H. G. Whitlock, county judge.
" " John Hardin, associate "
" " Stephen Dunlap, " "

619 In the matter of Illinois River Railroad bonds.

Ordered, that the clerk of this court burn and destroy bonds No. 1 to 7, both inclusive; No. 1 with interest warrants from 1863 attached, and bonds from 2 to 7, inclusive, with warrants from 1862 attached; and also bonds from 55 to 60, both inclusive, with interest warrants attached from 1861, said bonds being for five hundred dollars, and payable to the Illinois River Railroad or bearer, and taken up by said county and ordered to be cancelled.

And it is also ordered that said clerk cancel and burn interest warrants in said of bonds taken up by said county from bonds No. 61 to 100, both inclusive, for the years 1861, 1862, 1863, 1864, 1865, 1866, 1867, and 1868; and the clerk having obeyed said requirements of the court and burned said bonds and interest warrants in the presence of the court, it is further ordered that said clerk enter in the register of said bonds on the records of said county the cancellation of the same of the interest warrants aforesaid.

620 STATE OF ILLINOIS,
Morgan County, ss:

I, Samuel M. Martin, clerk of the county court within and for the county of Morgan, in the State aforesaid, do hereby certify that the annexed and foregoing contains a full, true, and complete transcript of all the proceedings had and entered of record, and of all orders of the court in and appertaining to the issuing of bonds by said county to the Illinois River Railroad Company, as fully appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Jacksonville, this 4th day of March, A. D. 1876.

[SEAL.] SAMUEL M. MARTIN,
County Clerk.

(Indorsed:) Exhibit 1. Henry Stryker, jr., special commissioner.

(Also indorsed:) Filed Sept. 14, 1876. J. A. Jones, cl'k.

622 A certain bill in the case of James Blair et al. vs. The County of Morgan et al. was filed in the Morgan County circuit court on the 13th day of September, A. D. 1867, and is in the words and figures following, to wit:

EXHIBIT 3.

Of the September term A. D. 1867 of the Morgan County circuit court.

STATE OF ILLINOIS,
Morgan County:

JAMES BLAIR, AARON ADDIE, GEORGE W. Dye, Henry Swift, Stephen Roney, Harvey O'Neal, Benjamin Gatton, Richard C. Gatton, Isaac Vail & Benjamin Beesley, Henry McKee & Benjamin Beesley, A. & J. Haines, L. Shaffer, & Reuben Bergstresser,
vs.
ILLINOIS RIVER RAILROAD, COUNTY OF MORGAN, & Marshall P. Ayers & Augustus E. Ayers.
} Creditors bill.

To the Hon. Charles D. Hodges, judge of the 1st judicial circuit
623 in chancery sitting:

Your complainants James Blair, Aaron Addie, George W. Dye, Henry Swift, Stephen Roney, Harvey O'Neal, Benjamin Gatton, Richard P. Gatton, Isaac Vail, & Benjamin Beesley, Henry McKee, Benjamin Beesley, O. & J. Haines, L. Schaffer, & Reuben Bergstresser, judgment creditors of the Illinois River Railroad Company on behalf of themselves & all others, the creditors of the Illinois River Railroad Company, who shall come in and seek relief by & contribute to the expense of this suit, respectfully shew unto the court that—

1st. James Blair aforesaid recovered a judgment against the Illinois River Railroad Company, at the February term, A. D. 1859, of the circuit court of Tazewell County, Illinois, for the sum of one hundred and thirty-one dollars & eighty-three cents, and costs $11.25; that an execution issued on said judgment 6th March, 1859, which was returned, no property found, on the 24th October, 1859; that an alias exe-
624 cution issued on said judgment on the 24th October, 1859, which was returned by the sheriff of said Tazewell County on the 8th March, 1860, no property found; that a pluries execution issued on said judgment 8th March, 1860, & was returned by the sheriff of Tazewell County no property found on the 20th day of June, A. D. 1860, and said judgment still remains wholly unsatisfied & due.

2d. That the said Aaron Addie recovered a judgment against the Illinois River Railroad Company, at the June term, A. D. 1860, of the Tazewell County circuit court, for the sum of three hundred and thirteen dollars and seventy-six cents, & costs $5.45; that an execution issued on said last-mentioned judgment on the 27th day of March, A. D. 1861, which was returned no property found on the 20th June, A. D. 1861, & said judgment still remains wholly unsatisfied & due.

3d. That George W. Dye aforesaid recovered a judgment at the June term, A. D. 1861, of the Tazewell County circuit court, Illinois, against the Illinois River Railroad Company, for the sum of two

625 hundred and sixty-nine dollars, and $5.95 costs of suit; that an execution issued on said last-mentioned judgment on the 24th June, A. D. 1861, and was returned no property found by the sheriff of Tazewell County on the 24th July, A. D. 1861, *no property found;* and said last-mentioned judgment still remains wholly unsatisfied & due.

4th. That Henry Swift aforesaid recovered a judgment at the September term, A. D. 1861, of the Tazewell County circuit court against the Illinois River Railroad Company, for the sum of two hundred dollars and six dollars & ten cents, & costs of suit; that an execution issued on said last-mentioned judgment on the 14th September, A. D. 1861, & was returned no property found on the 29th day of November, A. D. *A. D.* 1861, and said last-mentioned judgment still remains wholly unsatisfied & due.

5th. That said Stephen Roney recovered a judgment at the February term, 1863, of the Tazewell County circuit court, Illinois, against the Illinois River Railroad Company, for the sum of two hundred and

626 ten & $\frac{88}{100}$ dollars & ten $\frac{80}{100}$ dollars costs of suit; that an execution issued on said last-mentioned judgment on the 10th March, A. D. 1863, which was returned by the sheriff of Tazewell County, Illinois, on the 29th day of May, A. D. 1863, no property found, and said last-mentioned judgment still remains wholly unsatisfied and due.

6th. That Harvey O'Neal, Benjamin Gatton, Richard P. Gatton, Isaac Vail, & Benjamin Gatton, on the 22d day of November, A. D. 1866, in the Mason County circuit court, Illinois, recovered a judgment against the Illinois River Railroad Company for the sum of three thousand five hundred and sixty dollars & costs of suit, and that an execution issued on said judgment on the 7th day of February, A. D. 1867, which was returned no property found by the sheriff of Mason County, Illinois, on the 6th March, A. D. 1867, and said last-mentioned judgment still remains wholly unsatisfied & due.

7th. That the said Henry McKee, on the 23d day of November term, A. D. 1866, in the Mason County circuit court, Illinois, recovered

627 a judgment against the Illinois River Railroad Company for the sum of one thousand and eleven $\frac{53}{100}$ dollars, & costs of suit; that an execution issued on said judgment on the 7th February, A. D. 1867, which was returned no property found by the sheriff of Mason County, Illinois, on the 6th day of March, A. D. 1867, and said last-mentioned judgment still remains wholly unsatisfied & due.

8th. That said Benjamin Beesley, on the 23d day of November, A. D. 1866, in the Mason County circuit court, Illinois, recovered a judgment against the Illinois River Railroad Company for the sum of three hundred and fifty $\frac{88}{100}$ dollars & costs of suit: that an execution issued on said judgment on the 7th day of February, A. D. 1867, which was returned no property found by the sheriff of Mason County, Illinois, on the 6th day of March, A. D. 1867, and said last-mentioned judgment still remains wholly unsatisfied & due.

9th. That the said O. & J. Haines, on the 23d day of Novem-

628 ber, 1866, in the Mason County circuit court, Illinois, recovered a judgment against the Illinois River Railroad Company for the sum of two thousand six hundred and fifty dollars and costs of suit; that an execution issued on the said judgment on the 7th day of Feb'uary, A. D. 1867, which was returned no property found by the sheriff of Mason County on the 6th March, A. D. 1867, and the said last-mentioned judgment remains wholly unsatisfied & due.

10th. That the said L. Schaffer, on the 23d day of November, A. D. 1866, in the circuit court of Mason County, Illinois, recovered a judg-

ment against the Illinois River Railroad Company for the sum of seven hundred $\frac{43}{100}$ dollars, & costs of suit; that an execution issued on said judgment on the 7th February, A. D. 1867, which was returned no property found by the sheriff of Mason County, Illinois, on the 6th March, A. D. 1867, & the said last-mentioned judgment remains wholly unsatisfied & due.

11th. That the said Reuben Bergstresser, on the 23d day of November, A. D. 1866, in the circuit court of Mason County, Illinois,
629 recovered a judgment against the Illinois River Railroad Company for the sum of five hundred and twenty-two $\frac{92}{100}$ dollars & costs of suit; that an execution issued on said judgment on the 7th day of February, A. D. 1867, which was returned no property found by the sheriff of Mason County, Illinois, on the 6th day of March, A. D. 1867, & the said last-mentioned judgment remains wholly unsatisfied and due.

And your complainants further show unto the court that the said Illinois River Railroad Company has no property or effects, real or personal, out of which said judgments, or any part of the same, could or can be made by execution, and that the said Illinois River Railroad Company is utterly insolvent.

Your complainants further show unto the court that on the day of , the county of Morgan, upon due authority, subscribed for five hundred shares of stock (the shares being each one hundred dollars) to the capital stock of the Illinois River Railroad Company, which contract of subscription is in words & figures following, to wit:

We, the subscribers, citizens of Morgan County, hereby sub-
630 scribe to the capital stock of the Illinois River Railroad Company the number of shares set opposite to our respective names (one hundred dollars being a share), our said subscriptions to be subject to such rules & regulations as may from time to time be made by the directors of said company.

Subscribers' names.	No of shares.	Am't subscribed.	Am't paid in.
The county of Morgan by Jas. Berdan, county judge, duly authorized by the county court of said county.	500 shares.	$50,000	

Your complainants further shew unto the court that in the fall or winter of 1857 the county of Morgan, in payment of their subscription as aforesaid, issued and deposited with Messrs. Elliott & Brown, bankers, at Jacksonville, Illinois, one hundred bonds of the county of Morgan of five hundred dollars each, of the date of the 10th September, A. D. 1857, and payable on the 1st day of March, A. D. 1877, to the Illinois River Railroad Company, with interest coupons attached.

631 And your complainants further shew *and your complainants further show* unto the court that at the date of the deposit of said bonds as aforesaid, although the subscription of the county of Morgan was unconditional, some arrangement was made by the county of Morgan with some of the officers of said railroad company that the bonds should be expended, and that said bonds in the mean time should remain with Messrs. Elliott & Brown, on work in Morgan County, which arrangement, as against your complainants, creditors of said company, is invalid, & said bonds did & do belong to the said Illinois River Railroad Company.

And your complainants further shew unto the court that said county bonds of Morgan County, fifty thousand dollars in amount, excepting some seven thousand dollars in value, which have been applied by a decree of court to the payment of certain judgment creditors of the Illinois River Railroad Company, have lately been deposited with and are now in the custody and possession of M. P. Ayers & Co., bankers, a firm composed of Marshall P. Ayers & Augustus E. Ayers, to
632 the amount of forty-three thousand dollars, which bonds your complainants aver are worth par, viz, forty-three thousand dollars.

Your complainants further shew unto the court that the road of the Illinois River Railroad Company has been sold for debt, and the same, with all their rolling stock, depots, & appurtenances of said Illinois R. R. Road Company, have been transferred & passed into the possession & control of other parties, and that work on the said road in Morgan County has been entirely abandoned by said Illinois R. R. R. Company.

In consideration of which premises your complainants pray that the said county of Morgan, the Illinois River Railroad Company, & Marshall P. Ayers & Augustus E. Ayers be made defendants to this bill & answer touching all and singular the allegations thereof, and upon a final hearing your complainants pray that the said Morgan County bonds, or so many of them as may be necessary, now in the possession of M. P. Ayers & Co., be ordered to be sold, and the proceeds applied to the payment of the several judgments hereinbefore set forth, & costs, & that the court will render such other & further relief as to the
633 court may seem right & the interests of your complainants may require.

And your complainants pray for process of summons against the above named defendants, &c.

JAMES BLAIR,
AARON ADDIE,
GEORGE W. DYE,
HENRY SWIFT,
STEPHEN RONEY,
HARVEY O'NEAL,
BENJAMIN GATTON,
RICHARD P. GATTON,
ISAAC VAIL,
BENJAMIN BEESLEY,
HARRY McKEE,
O. & J. HAINES,
L. SCHAFFER, &
REUBEN BERGSTRESSER,
By their solicitor, H. E. DUMMER.

HENRY E. DUMMER,
Sol'r for Compl'ts.

And on the 27th day of November, A. D. 1867, there was filed in the clerk's office of the Morgan County circuit court a certain supplemental bill in the case of James Blair et al. vs. The Illinois River Railroad Company et al. in words and figures following, to wit:

Of the November special term, A. D. 1867, of the Morgan circuit court.

STATE OF ILLINOIS,
Morgan County:

To the Hon. the judge of the Morgan County circuit court:

634 JAMES BLAIR ET AL.
vs.
ILLINOIS RIVER RAILROAD COMPANY, MORGAN County, et al. } Creditors' bill.

And now come Henry T. Thomas, administrator of Richard S. Thomas, and Francis Low, and by leave of the court become parties to the above-entitled suit as complainants, & consent to contribute their just shares towards the costs & expenses of prosecuting said suit. Your complainants aver that the said Henry T. Thomas, administrator of the estate of Richard S. Thomas, recorded on the fifteenth day of November, A. D. 1866, a judgment against the Illinois River Railroad Company at the October term, A. D. 1866, of the Mason County circuit court, for the sum of twenty-four thousand four hundred and forty-six dollars and five cents damages in an action of assumpsit & nine $\frac{85}{100}$ dollars costs; that on the above judgment an execution issued from the office of the clerk of the Mason County circuit court issued to the sheriff of Mason County, Illinois, on the 7th day of February, A. D. 1867, which come to the hands of said officer, and which
635 was by him returned, no property found by said sheriff on the sixth day of March, A. D. 1867, and therefore wholy unsatisfied.

And your complainants further state that on the 9th day of November, A. D. 1867, your complainant Francis Low recovered at the October term, A. D. 1867, of the Mason County circuit court, to wit, on the 9th November, A. D. 1867, a judgment against the Illinois River Railroad Company, for the sum of three thousand three hundred and three $\frac{55}{100}$ dollars damages in an action of assumpsit, and eleven dollars and sixty-five cents costs of suit; & that on said last mentioned judgment an execution issued from the office of the clerk of the Mason circuit court, on the ninth day of November, A. D. 1867, directed to the sheriff of Mason County, Illinois, & came to his hands and was by him returned no property found & wholly unsatisfied on the thirteenth day of November, A. D. 1867.

And your complainants further shew unto the court that the said Illinois River Railroad Company is wholly insolvent and has no property of any kind which could be levied on by execution.

636 And your complainants further shew unto the court that heretofore there was deposited with Marshall P. Ayers and Augustus E. Ayers, bankers, by order of the Morgan County circuit court (the said parties then doing business under the name and style of M. P. Ayers & Co.) the bonds of the county of Morgan to the amount of fifty thousand dollars, which bonds belonged to and are now the property of the said Illinois River Railroad Company; that said bonds were the amount of the subscription of Morgan County to the capital stock of the Illinois River Railroad Company, and should justly be applied to the liquidation of the debts of the Illinois River Railroad Company. And your complainants pray that said defendants, the Illinois River Railroad Company, Morgan County, & Marshall P. Ayers & Augustus E. Ayers,

be made defendants to this bill, and be required to answer yet without oath (answers on oath being waived) your complainants' bill & all the allegations therein contained; and that upon a final hearing
637 that the court will order and decree that the said bonds of Morgan County, or their proceeds in the event that said bonds shall be ordered to be sold, be applied to the payment of the said judgments of the complainants in the creditors' bill, to which your complainants have by leave been made parties, including your complainants in this bill, & that the court will render such other & further relief as to the court may seem right, & the interests of your complainants' may require; & your complainants, &c.

HENRY S. THOMAS.
FRANCIS LOW.

HENRY E. DUMMER,
Sol'r for Compl't.

On the 27th day of November, A. D. 1867, there was filed in the clerk's office of the Morgan County circuit court a certain paper entering the appearance of the Ill. R. R. R. Co., in the case of James Blair et al. vs. The Ill. R. R. R. Co. et al., which paper is in words & figures following, to wit:

Of the November special term, A. D. 1867, of the Morgan County circuit court.

STATE OF ILLINOIS,
Morgan County, ss:

638 JAMES BLAIR, A. D. ADDIE, GRIGG & Smith, L. H. Wilkey, Henry Swift, George W. Dye, S. Roney, Henry W. McKee, Henry B. Thomas, Benjamin Beesley, Harvey O. Neal, Isaac Vail, Benjamin H. Hatton, Richard H. Gatton, & Benjamin Beesley, Ansel Haines & Jonathan Haines, Lafayette Schaffer, Reuben Bergstresser, & Francis Low
vs.
ILLINOIS RIVER RAILROAD COMPANY, Morgan County, Marshall P. Ayers, Augustus E. Ayers.
} Creditors' bill.

The Illinois River Railroad Company hereby enters her appearance & waives service of process in the above entitled suit, admits the insolvency of said company & consents to such an application of such Morgan County in payment of defendants' debts as the rights of the parties may require, &c.

B. W. PRETTYMAN,
Vice-President & Attorney for said Illinois River Railroad Company.

639 And on the 29th day of November, A. D. 1867, a certain decree was rendered in the case of James Blair et al. vs. The Illinois River Railroad Company in the Morgan County circuit court, the same being duly spread upon the records, which decree is the words & figures following, to wit:

Of the special November term, A. D. of the Morgan County circuit court 1867.

STATE OF ILLINOIS,
Morgan County :

JAMES BLAIR, O. D. ADDIS, GEORGE W. DYE, Henry Swift, S. Roney, Henry W. McKee, Henry S. Thomas, adm'ŧr of R. S. Thomas, Benjamin Beesley, Harvey O. Neal, Isaac Vail, Benjamin H. Galton, Richard H. Galton, Benjamin Beesley, Ansel Haines, Jonathan Haines, Lafayette Schaffer, & Reuben Bergstresser
vs.
ILLINOIS RIVER RAILROAD COMPANY, MARshall P. Ayers, Augustus E. Ayers. } Creditor's bill.

640 And now on this day came the parties by their solicitors, and this cause came on to be heard upon bills, answers of Morgan County, Illinois River Railroad Company, Marshall P. Ayers, Augustus E. Ayers, & William S. Hook, replication & proofs, and the court being now sufficiently advised of and concerning the premises, it is considered and adjudged that the Morgan County bonds on deposit with said M. P. Ayers & Co., to wit, $32,500.00 in nominal value, being sixty-five in number from 1 to No. 7 inclusive, and from No. 43 to No. 100 inclusive, be applied so far as necessary to the payment judgments and interest as follows, to wit:

James Blair	$204 13
A. D. Addis	456 40
George W. Dye	378 89
Henry Swift	278 10
S. Roney	269 80
Henry McKee	1,984 42
Henry T. Thomas, adm'ŧr	25,922 61
Benjamin Beesley	385 88
H. O. Neal, Isaac Vail, Benjamin H. Galton, Richard H. Galton, & Benjamin Beesley	3,785 80
641 Ansel Haines & Jonathan Haines	2,821 25
Lafayette Schaffer	751 43
Reuben Bergstresser	1,623 42
Francis Low	3,546 36

X. That James Berdan, esqr., be appointed special master to execute this decree.

3d. That the said M. P. Ayers & Co., depositaries of said Morgan County bonds, deliver the same to said special master.

4th. That unless said Morgan County & said judgment creditors, complainants as aforesaid, agree that said bonds shall be received in payment at an agreed price, the special master is directed to sell the same or so many of said bonds as necessary for cash at public sale, at the door of the court-house, in Jacksonville, Illinois, first giving notice of the time, place, and terms of sale by publication in the Daily Jacksonville Journal three weeks in succession, and that he apply the proceeds to the payment of the costs of suit & sale, and then to the payment of the claims of complainants as hereinbefore set forth, and any sur-
642 plus of bonds or cash be reported to this court.

5th. If the said county of Morgan shall agree with said creditors to take said bonds at an agreed price without sale, then the said special master shall deliver so many of said bonds to said creditors as at the agreed price will pay said judgments, and report any surplus, if any such there be, to this court.

6th. The said special master is directed to report his actings and doings in the premises to this court.

And on the 28th day of May, A. D. 1866, a certain decree was rendered in the Morgan County circuit court in the case of Henry T. Thomas, adm't'r, vs. Morgan County et al., and duly entered of record, which decree *which decree* is in the words & figures as follows, to wit:

Circuit court, Morgan County, State of Illinois, May special term, 1866.
In chancery.

HENRY T. THOMAS, ADM'T'R OF THE ESTATE of Richard S. Thomas, dec'd,
vs.
MORGAN COUNTY ET AL.

643 And now, on this 28th day of May, A. D. 1866, came Isaac Vail, by his solicitor Henry E. Dummer, and Wm. M. Dodge, administrator of the estate of Joseph Ladd, dec'd, by his solicitor H. B. McClure, and filed in this case the final order of the supreme court of the State of Illinois, made in this case at the January term thereof, 1866, reversing the decree rendered in this case as to the said Vail, and the said Dodge, administrator, and remanding the case for a decree in this case in pursuance to the directions in the opinion of the said supreme court; and the said Morgan County appearing, by their solicitors, and this cause coming on for final hearing, and it appearing to the court that there is due to the said adm't'r, &c., from the said Illinois River Railroad Company, on said judgment, the principal amount of $1,567.38, and for interest, 3 years 6½ months, at 6 per cent., the sum of $333.06, and for costs & expenses $12.75, making due him from said railroad company $1,913.19, and it also appearing that there is due to the said Isaac Vail from said railroad company the principal
644 amount of said judgment, $1,180.18, with interest at six per cent. from Oct. 22, 1862, three years and 7 mos., $898.73, and for costs and expenses on said case $16.00, making in all the sum of $5,094.91; and this case coming on to be heard upon the question of the marketable value of said bonds referred to in the said opinion of the said supreme court and in this case, and the court having heard the evidence of witnesses taken in open court, finds from the same that the marketable value of said bonds is forty cents to the dollar on the par value of the same.

It is therefore ordered and decreed by the court, by consent of the said Isaac Vail and the said William M. Dodge, adm't'r, &c., and also by the said Morgan County, that the said county pay to the said William M. Dodge, adm't'r, &c., or his solicitor for him, the said sum of $1,913.17, in cash, in five days from the date of this decree, and take receipt for the same; and upon payment of the same, and presentation of said receipt to the custodian of said bonds, he, said custodian, Marshall P. P. Ayers & Co., is ordered and directed to deliver to the said County of Morgan the sum of $4,782.97 of the said bonds in par value thereof and to take the receipt for the same.

645 And it is further ordered by consent said Vail and Dodge pay the costs in this case, and this case is continued.

To be recorded, by consent, as of May 28, 1866.

H. B. McCLURE,
Solicitor for Wm. M. Dodge, Adm'tr.
HENRY E. DUMMER,
Solicitor for Isaac Vail.
MORRISON & EPLER,
Solicitor for Morgan County.

And on the 8th day of October, A. D. 1863, a certain decree was rendered in the Morgan County circuit court in the case of Elliott & Brown vs. The County of Morgan et al., and duly entered of record, which decree is in words & figures following, to wit:

Circuit court, Morgan County. In chancery, September term, A. D. 1863.

STATE OF ILLINOIS:

EDWARD R. ELLIOTT, WILLIAM BROWN
vs.
THE COUNTY OF MORGAN, THE ILLINOIS
646 River Railroad Company, Alexander Studwell, Lucius Hopkins, George T. Cobb, Richard S. Thomas, William Thomas, Isaac Vail, Joseph Ladd.

On this eighth day of October, A. D. 1863, and during the September term of this court for the year aforesaid, came the said complainants and defendants by their solicitors, and this cause as to the issues formed between the said complainants and defendants is heard upon the bills of complainants, the exhibits therein mentioned, the replications to the answers of the county of Morgan, William Thomas, Alexander Studwell, Lucius Hopkins, George T. Cobb, and the within stipulation in said cause signed by their solicitor for the parties whose answers have been replied to as above stated; and the court being satisfied of the truth of the matters set forth in the complainants' bill, and that the complainants are entitled to the said decree and relief therein prayed for, orders and decrees that said complainants, after deducting
647 and reserving two hundred dollars in interest warrants, that the said county of Morgan be substituted to all the rights of the said William M. Dodge, adm't'r, &c., in and to the said judgment rendered and costs aforesaid against the said Illinois River Railroad Company, under and by virtue of said judgment; and it is further ordered by consent that the said county pay to the said Isaac Vail or his att'y for his use within five days from date of this decree the said sum of $5,094.91, take the receipt of the said Vail for the same, and that upon the payment of the same and the presentation of the receipt for the same the said Marshall P. Ayers & Co., custodian of said bonds, is hereby directed to deliver to the said county of Morgan $12,737.37 of said bonds in the par value of the same; and it is further ordered by *by* the court, by consent, that the said county of Morgan be substituted to all the rights of the said Isaac Vail under and by virtue of said judgment as against the said Illinois River Railroad Company.

And it is further ordered that the said custodian of said bonds file the

receipt of the said county or its agent for the said bonds in this court in this case by the next term of this court, and that the
648 or the proceeds thereof from the Morgan County bonds and interest-warrants stated in their bill to be held by them at the time of filing said bill, deposit the remainder of said bonds and warrants and the proceeds thereof for safekeeping with M. P. Ayers & Co., bankers of Jacksonville, Illinois, to be by them held subject to the further orders of this court, and that said complainants file in this cause the receipt of said M. P. Ayers & Co. for said bonds, warrants, and proceeds, by consent of the solicitor of said defendants.

It is further ordered that the answers and interpleaders heretofore filed in this cause stand and be considered as bills of interpleader therein, with leave to any of said defendants to amend the same or file original and cross-bills in said cause within ninety days from this date, and that without further formal pleadings excepting so far as the same may be rendered necessary by bills and cross-bill hereafter filed, this cause for the purpose of determining the respective rights of said defendants as against each other be considered at issue upon said interpleader, and that said defendants, excepting so far as the matters in their inter-
649 pleaders or other pleadings have been or may be admitted, proceed, after giving due notice, to take proofs of the same for hearing at the next term of this court.

It is further ordered and decreed that said defendants, and each and all of them, be perpetually enjoined from all further proceedings in all actions and suits heretofore instituted by them against said complainants, or either of them, for the above-mentioned Morgan County bonds and interest-warrants, or any them, or for the proceeds of the same, or any of them, or for any interest therein, or for any pretended indebtedness or liability of said complainants, or either of them, for or on account of being or having been the holders or depositaries of said bonds and interest warrants, or any of the proceeds thereof.

Said defendants, and each and all of them, are also perpetually enjoined from hereafter instituting any suit or suits, actions or proceedings against said complainants, or either of them, for said Morgan County bonds and interest-warrants, or any of them, or any interest therein, or any proceeds thereof, or for or on account of any pretended indebted-
650 ness, liability, or responsibility of said complainants, or either of them, by reason of their having been the holders and depositaries of said bonds and interest-warrants, or any of the proceeds thereof.

It is further ordered that this suit be hereafter docketted in the name and title of Richard S. Thomas vs. The County of Morgan, The Illinois River Railroad Company, Alexander Studwell, Lucius Hopkins, George T. Cobb, William Thomas, Isaac Vail & Joseph Ladd.

It is further ordered that said complainants, Edward R. Elliott and William Brown, do have and retain the two hundred dollars to be deducted and reserved by them out of the aforesaid interest-warrants or their proceeds as above stated in satisfaction for their costs, charges, expenses, and solicitors' fees in this suit.

STATE OF ILLINOIS,
Morgan County:

I, Joseph W. Caldwell, clerk of the circuit court within and for the county of Morgan, in the State aforesaid, do hereby certify that the above and foregoing twenty-three pages constitute a complete
651 and true copy of the bill filed in the case of James Blair et al. vs. The County of Morgan et al.; the supplemental bill in the case

of James Blair et al. vs. The Illinois River Railroad Company et al.; the entering of the appearance of the Illinois River Railroad Company in the case of James Blair et al. vs. The Illinois River Railroad Company et al.; the decree rendered in the case of Henry L. Thomas, administrator, &c., vs. Morgan County et al.; the decree rendered in the case of Edward R. Elliot & Wm. Brown vs. The County of Morgan et al. (all of said causes heretofore pending in said Morgan County circuit court on the chancery side thereof), as fully and completely as the same appear from the files and records of my said office.

In testimony whereof I hereunto subscribe my name and attach the seal of said court, at my office, in Jacksonville, Morgan County, Illinois, this 13th day of March, A. D. 1876

[SEAL.] JOSEPH W. CALDWELL, *Clerk.*

652 It is stipulated that the pleadings & papers certified above, if admissible as evidence in the case of Allen vs. Morgan County et al., shall not be objected to on the ground that all the papers on file in the cases to which said certified copies relate are not also offered at the same time.

It is further stipulated that the transcripts of judgments of any of the complainants in the Blair suit, filed in said suit, or in the case of Morgan County vs. P., P. & J. R. Co. et al., and the depositions of Isaac Vail, Francis Low, B. L. Prettyman, Reuben Bergstresser, Benjamin Beesley, M. H. L. Schooley, filed in the last named case, may be read as if taken in the case of Allen vs. Morgan County.

MORGAN COUNTY,
By SPRINGER & DUMMER & BROWN,
Its Solicitor'.
ALLEN, ARNOLD & TROWBRIDGE,
By DEARBORN & CAMPBELL,
Their Solicitors.

(Indorsed:) Exhibit 3. Henry Stryker, jr., special commissioner.

(Also indorsed:) Filed Sept. 14, 1876. J. A. Jones, cl'k.

653 Be it remembered, that heretofore, to wit, on the 31st day of July, 1863, there was filed in office of the clerk of the Morgan County circuit court a certain paper entitled "The answer of Morgan County in the case of Elliott & Brown vs. Morgan County, Richard S. Thomas, et al.," which answer is in the words & figures following, to wit:

EXHIBIT 4.

STATE OF ILLINOIS,
Morgan County:

Circuit court of said county, September term, 1863. In chancery.

WILLIAM BROWN & EDWARD R. ELLIOTT
vs.
MORGAN COUNTY, ILLINOIS R. R. CO., ALEXANDER STUDWELL, LUCIUS HOPKINS, & GEORGE T. COBB, RICHARD S. THOMAS, WILLIAM THOMAS, JOSEPH LADD, and ISAAC VAIL.

Morgan County, one of the defendants in the above-entitled cause, for

answer to so much of said bill filed herein as it is advised it is necessary for it to answer, and for a bill of interpleader, herein say:

That at the September term, 1856, of the county court of the
654 said county of Morgan, an order was made and entered upon the records of said court as follows:

"On the petition of a large number of the taxpayers of the county, it is ordered that the qualified voters in the county be required, at the general section to be held in November next, to vote for or against authorizing the county court to subscribe fifty thousand dollars to the capital of each of the following railroad companies, to wit, to the Jacksonville and Carrolton Railroad Company, fifty thousand dollars, in addition to the former subscription by the county; to the Illinois River Railroad Company, fifty thousand dollars; and to the Tonica & Petersburg Railroad Company, fifty thousand dollars, said subscription to be made in bonds to be issued by the county court, redeemable on the first day of March, 1877, and to bear interest at the rate of six per cent. per annum, and the clerk of this is required to give public notice according to law."

The said county further states, that at the said November election, 1856, pursuant to said order and no other, there was cast for county offices 3,499 votes, as appears by the abstract of votes on record in
655 said office, and that at said election 1,753 votes were cast in favor of the county court subscribing the stock mentioned in said order, and that upon that order submitting said proposition to vote of the people of said county, and the election held in pursuance thereof, and of no other, was the authority to *to* judges of said county court for issuing in the manner hereinafter stated the bonds in complainants' bill mentioned.

And the said county of Morgan, further answering, says that said supposed county bonds were not signed, and deposited with complainants, pursuant to the vote of the people of said county, under the order aforesaid, nor of the election aforesaid; that the said county of Morgan, nor the judges of the county court thereof, had no authority under the order submitting said question to a vote of the people of said county, nor under the act of the legislature of the State of Illinois pursuant to which said election was authorised, nor under any law of this State, to issue the bonds in complainants' bill mentioned, in payment for shares of stock in the said Illinois River Railroad Company, or otherwise; and that said county bonds were, and are now, absolutely and ut-
656 terly null and void, and the said Morgan County is not bound by them; nor is said county court bound or under any legal obligations to pay said bonds or any interest warrants attached to the same; nor is said county court bound to provide means for paying the same.

The said Morgan County, further answering, says, that on the 7th day of September, 1857, the Illinois River Railroad Company, acting through its president, the defendant Richard S. Thomas, applied to the county court of said county to issue the fifty thousand dollars in the bonds of said county for the benefit of said railroad company; that said county court had before that time and then did refuse to issue said bonds to said company, not being satisfied that said railroad company would in good faith build and put in running order the track of said road to Jacksonville in said county; that the said Richard S. Thomas, president of said railroad company, acting for the same, represented to the judge and associate justices of said county court that railroad company had contracted for the building of said railroad from Virginia, in Cass County, Illinois, the same to be complete by Dec. 1st, 1858, and

in the contract so made it was expressly provided that the bonds
657 in question should be expended for work on said road to be performed on that part of the track situate in Morgan County, and not elsewhere, and that that part of said road from Pekin, Illinois, to Virginia aforesaid, was then in process of construction.

That the said Richard S. Thomas, acting for said railroad company, delivered to said county court a paper written and signed by himself as the president of said road, and which paper was filed on that day in the office of the clerk of said court, making the statements aforesaid, a copy of which is herewith filed, marked Exhibit A, and made a part of this answer and bill of interpleader. That at that time and place the said county court made the order in regard to delivery of said county bonds, a copy of which is filed with this answer and made part of the same, and marked Exhibit B.

The said county court, further answering, say that it was expressly understood and agreed between the judge and associate justices of said county and the said Illinois River Railroad Company, acting by its president and general superintendant, the defendant Richard S. Thomas, before the making of said order and before the issuance; that is
658 to say, before the signing and delivery of said bonds to complainant and of depositing of any of said bonds with complainant, that said bonds should be deposited with complainants, to be held by them and to become the property of said railroad company only as the work progressed and in payment for work as it should be performed on the road from Jacksonville, in said county of Morgan, to the county line of said county.

Said Morgan County, further answering, says that it was the understanding at the time and in the contemplation of the said county that said company would immediately proceed under the contract above referred to and complete said road within the time limited by said contract; and that without said agreement and understanding as to the application of said bonds said county of Morgan would not have ordered the signing of any of said bonds or have delivered any of them, either to complainants or to any one else.

Said Morgan County denies that said bonds were deposited with complainants, for said railroad company, and to be the property of said company, upon the receipt by said complainants from said railroad company certificate of stock to amount of fifty thousand dollars or
659 any other sums upon any other condition or agreement than that above set forth in substance.

Said Morgan County further states and shows that in fact said railroad company had on the 7th day of September, 1857, and at the time of the filing of the paper aforesaid in said office by the defendant Richard S. Thomas, and of the making of the agreement aforesaid, had contracted for the construction and building of the said railroad, the same to be completed and finished by the first day of December, 1858. That said contract was made with one Allen & McGrady, and, as said defendants is informed and believes, provided specially that said Allen & McGrady were to take the bonds in complainants' bill mentioned at their par value in part payment for their work on said road, done and performed on said track in Morgan County and not elsewhere; and that said Allen & McGrady were not only to be entitled to receive said bonds as the work progressed on said track in said county.

Said Morgan County, further answering, says that it was by agreement between said railroad company, and the said railroad company at that time agreed that no part of said agreement, so far as the use of

said bonds were concerned, should not appear on the records of
660 said county court, for the reason that it was feared that that fact appearing on said record might injuriously effect the market value of said bonds after the same should be put into market by the said Allen & McGrady or whoever should become entitled to them after the performance of said work.

Said Morgan County, for answering, says that in accordance with said understanding said bonds and interest warrants were deposited with said complainants, and they deny that they ever authorized any of said bonds to be delivered by said complainants, or that said railroad company, or any one claiming through them, have ever complied with the terms and conditions upon which said bonds were so deposited, so as to entitle them or either of them to any of the same, or the said complainants to receive any certificate of stock in said railroad company for said county.

Said county, further answering, says that afterwards, but at what particular date said county cannot state, the said Richard S. Thomas, president and general superintendent of said company, without the knowledge or consent of said county or any of its agents or officers, cancelled said contract or consented to the cancelling of said contract
661 with the said Allen & McGrady. Said defendant charges that said act of said company was a fraud upon the rights and interest of said defendant, and in violation of the spirit of said agreement.

Said Morgan County further says that the said railroad company, acting through the said Richard S. Thomas, undertook and attempted to pay to the said Allen & McGrady $4,000 of said bonds, as a bonus or inducement for them to surrender their said contract or some portion or part of the same; and that said Allen & McGrady had due notice that said bonds were only applicable for construction of a portion or particular part of said road, and were not purchasers for values without notice; that these $4,000 in bonds, or the right to them thus obtained, and now claimed by defendant William Thomas, he claimed to have purchased the right of Allen & McGrady to them.

Defendant charges that defendant William Thomas, at the time of said several transactions, was a director in said company and a citizen of said county, and had full notice of all the facts above stated in regard to said bonds before he paid anything for them or before he incurred
662 any liability on account of the same, and that he is not a purchaser for value without notice, and he is estopped from denying the claims of defendants and the application of said bonds, and that the rights of the said William Thomas are subordinate to the rights of said county.

Said Morgan County further states that said company never has to this day caused any work to be done upon said track, or any money expended in the purchase of materials, or in preparation for the construction of said road track from Virginia, in Cass County, to Jacksonville, in Morgan County, since said agreement with this defendant in regard to said bonds, and since the cancelling of said contract with Allen & Magrady, and said defendant further charges and states that said company has wholly abandoned said enterprise; said company is hopelessly and entirely insolvent, and that said railroad track with all the property, franchises, and privileges to the same belonging, have been sold and transferred by said company to defendants Studwell, Hopkins, and Cobb, and that said company is largely indebted to other persons, and that said company has no means whatever to pay the same, and that said company has dissolved and abandoned said enterprise, and

663 that the same is a failure; said defendant states tha*m* none of the parties to this suit have in any way or manner incurred any liability, or have on the faith of said bonds and without notice extended credit to said company.

Defendant further says that defendant Richard S. Thomas was the president of said company at and before September 7, 1857, and so continued up to and after the 31st day of January, 1862, when it is pretended that said company transferred to the said Richard S. Thomas $16,502.24 in value of said bonds, but for what consideration or for what reason this defendant is not informed; but defendants insists that if it should be held by this court that said bonds are valid, and that defendant has legal authority to issue the same, yet defendant insists it would be gross injustice to permit said company to apply any part of the same to payment of any liability of said company or to sell any part of the same to said Richard S. Thomas.

Defendant denies that said Richard S. Thomas has equitable claim to any of said bonds or interest-warrants as against this defendants; that the directors pres*erve* at the meeting Jan'ry 31, 1862, at Springfield, Ill's, as appears by one of the exhibits in complainants' bill, had no
664 authority to transfer any of said bonds or any interest in them, and that by said attempted transfer no title, either legal or equitable, passed to said Richard S. Thomas.

Defendant further says that by the trust deed made by said company, date November 1, 1858, to defendants Alexander Studwell, George T. Cobb, and Lucine Hopkins, trustees for the bondsholders in the same mentioned, all the property and effects of said company, including said company's title to said bonds, if, indeed, said company had any title, was pledged to the said trustees, and that thereby the said company parted with whatever title said company may have had to the same, and that said company could not afterwards pass any title to said Thomas nor to any one else, nor could the defendant Joseph Ladd nor Isaac Vail acquire any interest or title in any of said bonds by any garnishee process issue upon any or either of the judgments referred to in complainants' bill, and that neither of said defendants have any right, title, or interest in any of said bonds or interest-warrants.

Defendant again repeats that the county court of said county had no legislative authority nor authority from the legal voters of said
665 county to issue any of the bonds in complainants' bill mentioned, and that each and every one of the one hundred bonds in complainants' bill described, a*nd* absolutely null and void.

Defendant prays that said one hundred bonds in complainants' bill mentioned and each and every one of them and the interest-coupons or warrants attached to each and all of the same be delivered by complainants to defendant to be cancelled, and that each and all of the other defendants to this suit be enjoined from further prosecuting any claim to any of said bonds, and that they and each of them be barred of all right to any part of the same and for all other and further relief as to equity may belong and said defendant be entitled to, and as in duty bound said defendant will ever pray, &c.

MORGAN COUNTY,
By MORRISON & EPLER,
Sol'rs.

And afterwards, to wit, on the 1st day of June, 1864, there was filed in the clerk's office of the Morgan County circuit court a certain paper

entitled "Cross-bill" in case of Morgan County vs. Richard S.
666 Thomas et al., which cross-bill is in word' and figures following, to wit:

Circuit court, Morgan County, State of Illinois. March term, 1864.

Morgan County, by way of cross-bill in the case of Richard S. Thomas against said Morgan County, William Thomas, and others, by leave of the court state and show unto your honor that at the September term, 1856, of the county court of said county, an order was made and entered upon the records of said county authorizing the voters of said county to vote at the general election to be held the insuing November, for or against subscribing, authorizing the county court to subscribe*d* $50,000 to each of three following named roads, to wit: To the Tonica & Petersburg Road, the Jacksonville and Carrolton Road, and the Illinois River Road, a true and correct copy of said order being copied into the bill of interpleader, filed by said county in the case of Elliott & Brown against said county and others, to which complainants refer as part of this bill.

That under and by virtue of said order said election was held
667 at the *the* said November election, and at said election there was cast for county officers 3,499 votes, and by the abstract of votes on file in said office it appears that 1,753 votes were cast in favor of said county subscribing to said several roads.

Complainant further states that upon the said order was and is based alone the right or authority of said county court to subscribe said stock and to issue the bonds referred to in the bill of complainant in this case. Complainant charges that said order was, when made, without authority and void, and gave to said county court by virtue of said election no authority to issue any bonds binding upon the said complainants, and that the pretended Morgan County bonds mentioned in said original bill are utterly void, and of no force and effect whatever.

Complainant further states that on or about the seventh day of September, 1857, the Illinois River Railroad Company, acting through Richard Thomas, the complainant, then president, applied to the county court of said county to issue the pretended Morgan County bonds mentioned in said original bill. That said county court refused to issue said bonds, or any part of them, as they had often refused
668 before that date: but finally, upon the promise of the said Richard S. Thomas, president of said railroad company, undertaking or agreeing in substance that said fifty thousand dollars in bonds applied for should be exclusively appropriated by the said Illinois River Railroad Company for payment of labor and material done and furnished in the construction of said road in the county of Morgan, said county court agreed to make out and sign the bonds referred to in said bill, and to deposit said bonds with Elliott & Brown, bankers, to be held by them and delivered in future in payment for labor and material furnished and applied as aforesaid upon that part of said road track within the county of Morgan, as the proper estimates were made, and as other stockholders were required to pay their respective subscriptions to the capital stock of said company.

That at the time of said transaction the said Richard S. Thomas, by way of inducing the said county court to issue and deliver said bonds, filed a paper in said court, a copy of which is made part of complainants' answer and bill of interpleader filed in this case and now
669 referred to as part of this bill, from which it will appear that the

said Ill's River Railroad Company had put said road under contract to Jacksonville, Ill's, to be completed by December, 1858, and that by the terms of said contract the builders of said road was to take these Morgan County bonds, payable only as other stock subscriptions were payable, and for labor and material to be furnished and expended on the said road from the Morgan County line to Jacksonville in said county, and not otherwise.

Complainant further states that the said Richard S. Thomas, president as aforesaid, as a part of said arrangement, promised and agreed to have the substance of said agreement spread upon the records of said co. to show the appropriation of said bonds and the proper understanding of said co.: and said county complainant further states that it is unknown to this complainant whether the said president of said company ever complied with that part of said agreement or not; but if it was ever done complainant has never been able to find the same.

Complainant further states that said pretended Morgan County bonds were signed under the direction of said county court and deposited as aforesaid, but without any authority to said Elliott and Brown
670 to deliver them, or any of them, only upon the terms and conditions aforesaid; that said railroad company never complied in any particular with the agreement, and never entitled itself to the possession of any of, said bonds. Nor has the said company, nor any one claiming through or under said company, ever had control or custody of any of said bonds, nor have they or either of them any right or title to the same or any of them.

Complainant further states that no labor has been done—no material furnish' towards the building of said railroad track since the deposit of said bonds referred to upon that part of said road within the county of Morgan.

Complainants further states that some time after the making of the arrangement aforesaid, but at what particular date complainant is not able to state, said Illinois River Railroad Company wholly repudiated said agreement, and thereby forfeited all right to hold said Morgan County bonds by the same, in this, that without the knowledge or consent of said Morgan County said railroad company consented to the cancellation of the contract for building of said road, and did actually cancel the same and release Allen & Magrady, the contractors, from all ob-
671 ligation to build or construct said road. That to get rid of said contractors and their contracts said company attempted to transfer to the said Allen & Magrady $4,000 of said Morgan County bonds, all of which complainants alleges was in fraud of the rights of complainants and without her consent or knowledge.

Complainant charges that by the acts and transactions last aforesaid the said company wholly repudiated the arrangement by which said county was to permit any of said bonds to be delivered for the benefit of said co., was in violation of said agreement, and was and is a release and discharge of complainant from all obligation under said contract, and that complainant is entitled to have said bonds surrendered to the proper officers of said county.

Complainant further states that during all this time and until long after the transaction aforesaid the said Richard S. Thomas was the president of said company, actually engaged in the management of its affairs, and had full notice of all the foregoing facts before and at the time he claims to have acquired the interest in said bonds set forth in his bill filed in this case, and that any interest or title he may have in

672 the bonds aforesaid is subordinate to and subject to the rights of complainant.

Complainant further states that the title of William Thomas to a portion of said bonds is derived through the said Allen & Magrady, and that he was at the date of said transaction a director in said company and had full notice of all the above named facts. That complainant further alleges that each and all of said bonds are wholly void; that the same appeared upon their face to be made payable at the American Exchange Bank in the city and State of New York, and is therefore wholly and absolutely void. That the judges of the said county court had no legal authority to make, sign, or in any manner issue any such bonds, and that said bonds are therefore wholly null and void. Complainant refers to a copy of one of said bonds on file in said case as a part of this bill, and prays that the same be taken and considered as a part of this bill.

Complainant further states that on the day of November, 1858, the said railroad company executed a trust deed to Alexander Studwell, Lucius Hopkins, and Geo. T. Cobb, as trustees for the bondholders, conveying all the interest, title, and assets of said company

673 to said trustees, and that said company have failed to comply with the terms of said trust deed in the payment of interest, and by such failure forfeited the conditions of said deed; and that said trust deed has been foreclosed, and all of said effects sold and bought in by said trustees, and now all of said property that did belong to said company was passed to the said trustees, and that said company is wholly insolvent and worthless; that the rights of said trustees accrued to them long before the said Richard S. Thomas, William Thomas, or others named in said bill acquired any rights in said bonds, and that if said bonds are valid and binding, the title to the same passed by said trust deed to said trustees; and therefore the said Thomas, president, and the said William Thomas could not acquire any interest or title to the said bonds.

Complainant charges and states that one Joseph Ladd and one Vail have attempted to acquire some lien upon said bonds by service of a garnishee process upon Elliott and Brown, which said bonds were in their hands, issued upon judgments they claim to have recovered against said railroad company.

674 Complainant charges that said garnishee process' were each irregular and void, and no lien' have or could be acquired under or by virtue of either of them.

Complainants states that if said bonds are permitted to go into the hands of any one the coupons attached to the same might be cut from the same, and your complainant greatly harrassed and annoyed in defending suits upon the same, and thereby put to great trouble and costs.

Complainant prays that Richard S. Thomas, William Thomas, Alexander Studwell Geo. T. Cobb, Lucius Hopkins, The Illinois River Railroad Co., Joseph Ladd, and Vail be made parties defendants to this bill, and that each of the same be required to answer all and singular the allegations in this bill, not on oath, which is waived according to the statute, and that upon a hearing of this case, may it please your honor, to render a decree declaring said bonds null and void, and that the custodians of the same bring the same into court, with all the coupons to the same belonging, and that the same be cancelled and the complainant declared discharged from the same, and for such other

and further relief as to equity may belong and her cause may
675 merit, and as in duty bound, &c.

MORRISON & EPLER,
Sol's for Morgan County.

And afterwards, to wit, on the 30th day of April, A. D. 1864, there was filed in the clerk's office of the Morgan County circuit court a certain paper entitled "amended answer" of Morgan County in case of Richard S. Thomas vs. Morgan County et al., which amended answer is in words & figures following, to wit:

Circuit court, Morgan County, State of Illinois, September term, A. D. 1864. In chancery.

RICHARD S. THOMAS)
vs.
MORGAN COUNTY ET ALS.)

The defendant, Morgan County, by its solicitors, by way of amendment to their original answer and bill of interpleader filed in this case by leave of the court, say that the said bonds mentioned in the original bill, filed in this case by Elliott and Brown, and also mentioned by the said Richard S. Thomas, are null and void; that said bonds are made payable in the city of New York, and not at the office of the
676 treasurer of Morgan County, as by law the same should have been; that the county judge of said county had no authority to issue bonds to said company payable at any other place than the office of the county treasurer of said county, and that said are not in harmony of any law of the State of Illinois, and are not binding upon the county of Morgan; that by making said bonds payable in the city of New York, if held valid and binding, would greatly increase the burden and expenditures of said county in providing funds in the said city of New York with which to pay the same; that in order to pay exchange, or express charges for the remitting of funds to New York for the payment of said bonds, and the funds necessary to pay attorneys and agents to attend to such payments, said county of Morgan would necessarily be compelled to pay not less than thousand dollars, in order to discharge said bonds in New York over and above the fifty thousand dollars, and interest on the same.

Defendant prays that said bonds be held and treated as utterly null and void, and that M. P. Ayers & Co., in whose hands the same now are, be ordered to deliver them to this defendant in order to be cancelled, and for general and special relief, &c., and as in duty bound
677 it will ever pray, &c.

MORGAN COUNTY,
By MORRISON & EPLER.

And afterwards, to wit, on the 27th day of November, 1867, there was filed in the clerk's office of the Morgan County circuit court a certain paper entitled "Answer of Morgan County," in the case of James Blair et al. vs. Ill. R. R. Co. et. al., which answer is in words and figures following, to wit:

Circuit court, Morgan County, State of Illinois, November special term, 1867.

JAMES BLAIR & OTHERS
vs.
ILLINOIS RIVER RAILROAD COMPANY, MORGAN County, Marshall P. Ayers and Augustus E. Ayers. } Creditors' bill.

The separate answer of Morgan County, Illinois, to so much of said bill as she is advised she is bound to answer, and saving and reserving all manner of exceptions to the insufficiency of said bill, for answer
678 says that it is true that the county court of Morgan County, in pursuance of a vote of the people of said county, subscribed fifty thousand dollars in bonds to the capital stock of said Illinois River Railroad Company; that said subscription was made in the year 1856; that on or about the 10th day of September, 1857, the county court of said county passed an order that said bonds be issued, and that subsequently one hundred bonds of $500 each was prepared and signed by the then county judge and associates of said county, and countersigned by the clerk of said county, and which said bonds were payable to the Illinois River Railroad Company, or bearer, having 6 per cent. interest warrants attached, falling due annually, said bonds having 25 years to run, and which said bonds were intended to be, when subsequently delivered, in satisfaction of the subscription of said county to the capital stock of said R. R. co.; that the interest warrants to each of said bonds falling due March 1, 1858, was cut off, and said bonds deposited in the hands of Elliott & Brown, bankers, of Jacksonville, with the understanding with the officers of said railroad company that said bonds should only become the property of said railroad company, and should be used for the purpose of said railroad company in payment or for
679 work and labor upon said road in Morgan County, and not otherwise, and that no material labor has been bestowed by said railroad company, or its agents, on said road in said county, and the terms and conditions of said deposit have not been complied with, and which fact said respondent sets up as defense to this suit.

Respondent states that the interest warrants on each of said bonds, falling due March 1, 1859, and March 1, 1860, were paid by said county as the same fell due, and were taken up and cancelled.

Respondent further states that subsequently, and some time in the year 1863, various parties claiming said bonds, and the county of Morgan refusing to let said bonds go, suits were instituted by various parties in this honorable court, and that by an order made by this court in said case said bonds were placed in the hands of the defendant, M. P. Ayers, A. E. Ayers, as stake-holders of the same, and that subsequently such proceedings were had in this court in said case that 35 (No. from 8 to 42, both inclusive) of said bonds were ordered delivered to parties claiming the same in said suit, and said bonds, with warrants attached, were subsequently taken up by said county and cancelled.

680 Respondent further states that the balance of the said 100 bonds still remain in the hands of said M. P. Ayers & Co., the holders of the same, and being No. from 1 to 7 and from 43 to 100, both inclusive; that said *said* bonds No. 6 had interest warrants for 1863, and bonds from 2 to 7 interest warrants, from 1863 and the others from 1861 and all subsequent years, the others having been taken up by the county.

Respondent, further answering, says that if any of said several claimants are entitled to any of these bonds, and which is denied by the said respondent, said respondent prays that the court will make such decree as will protect said respondent from all further suits.

Respondent, further answering, says that she is ignorant of the alleged fact that said several complainants in said creditors' bill filed have recovered judgments against the said Illinois River Railroad Co., as alleged in said bill, or that said complainants, or either of them, have any debt against said railroad company. Respondent, therefore, prays the court to require the several complainants to make strict and full proof of the same.

Respondent further states that since the bill was filed in this case and process was issued and served, and on the 22d day of October, 1867, on this respondent, a bill has been filed in the circuit court
681 of the United States for the southern district of Illinois, by Alexander Studwell, Geo. T. Cobb, and Lucius Hopkins, trustees for certain bondholders, against the said Illinois River Railroad Company, said respondent, and the said M. P. Ayers, A. E. Ayers, and one William S. Hook, and which bill so filed said complainants are setting up a judgment or decree against said railroad company in said United States court for over a million of dollars—a true copy of said bill is herewith filed and made part of this bill—and claiming the right to subject these bonds to payment upon said debt; that process was served in said case upon respondent on or about the day of November, 1867.

Respondent says that she denies the right of any and all of said claimants, either in this court or any other court, to have any part of said bonds applied to payment of any debt of said Illinois River Railroad Company; that this respondent is not bound to pay any part of said bonds until said Illinois River Railroad Company complies with the conditions upon which said bonds were deposited with the said Elliot & Brown. Said respondent says that said bill was filed in the said United States court, as aforesaid, and process served on respondent
682 prior to the exhibition in the case in this court of the claims or judgments of Francis Low, and also of Henry T. Thomas; that by an order made in this case at this term of the court, said Francis Low and Henry T. Thomas, as have been made parties to this creditors' bill; and respondent insists that if any of said several creditors have any right to any of said bonds by virtue of their alleged judgments, that the said Francis Low and Henry T. Thomas are not entitled to any relief in this court until the claims of said Studwell, Hopkins, and Cobb have had their case adjudicated; and if found entitled to any relief they shall be first paid, and that this court shall not make any decree awarding payment of any part of said judgment in favor of Low and of Thomas out of said bonds, if otherwise found entitled, until the United States circuit court shall have first disposed of the suit pending in said court as above referred to.

Respondent prays that said bonds be awarded to said respondent, and that she be dismissed with her costs, &c.

WHITLOCK & GALLAHER &
MORRISON & EPLER,
Sol's for Rept.

683 And afterwards, to wit, on the 25th day of June, A. D. 1873, there was filed in the clerk's office of the Morgan County circuit court a certain paper entitled, "Separate answer of the county of Morgan," in the case of William Thomas vs. The County of Morgan et al.; which answer is in the words and figures following, to wit:

Of the August term, 1873, of the Morgan circuit court.

STATE OF ILLINOIS,
Morgan County:

WILLIAM THOMAS
vs.
THE COUNTY OF MORGAN, THE PEORIA, PEKIN & Jacksonville Railroad Company, and others. } Bill in chancery.

The answer of Morgan County to the bill of complaint against respondent and others, filed by William Thomas.

This respondent, saving and reserving all exceptions to complainant's bill and amended bill and supplemental bill, for answer to so much of the same as respondent is advised it is necessary to answer, says that it is admitted that the acts of the general assembly of the State of
684 Illinois referred to in said bill of complaint were duly enacted, and that the Illinois River Railroad Company was duly organized under the act incorporating said company, and proceeded to build the railroad from Virginia, in Cass County, to Pekin, in Tazewell County. It is further admitted by the respondent that in the year A. D. 1857 a subscription was made by the county of Morgan to the capital stock of the Illinois River Railroad Company of fifty thousand dollars, and for the payment of said subscription one hundred bonds of the county of Morgan, each of the denomination of five hundred dollars, dated the 1st September, 1857, and payable twenty years after date, with six per cent. interest per annum (as shown by interest coupons attached), said bonds, being numbered from one (1) to one hundred (100), were issued to the Illinois River Railroad Company. And it is further admitted that by an arrangement made by the county of Morgan with the Ills. River Railroad Company all of said bonds were deposited with Messrs. Elliott & Brown, bankers, at Jacksonville, Illinois, in payment for the said subscription of stock, with the stipulation that none of said bonds should be paid out except upon work done upon the Illinois River Rail
road, in Morgan County; and that upon so depositing said bonds
685 certificates of stock for $50,000 were issued to Morgan County by said company, and deposited with Messrs. Elliott & Brown.

Your respondent, further answering, says that respondent has been informed, and believes it to be true, that on the 1st November, A. D. 1858, the Illinois River Railroad Company executed a mortgage or trust deed conveying their road, franchises, and property appurtenant to said road, to secure the payment of one million of bonds, not including property and assets not attached to and part of the same railroad.

Your respondent, further answering, says that respondent has been informed, and believes it to be true, that the Illinois River Railroad Company, on the 2d day of April, 1859, being indebted to Messrs. Allen and McGrady, contractors to build the road of said company, gave to said McGrady two orders on Messrs. Elliotte & Brown, each of said orders being for two thousand dollars of the bonds of Morgan County, deposited with said Elliott & Brown as aforesaid, which orders have never been paid so far as known to this respondent; and this respondent is further informed, and believes it to be true, that said two orders were transferred & assigned to the complainant.

Your respondent, further answering, admits it to be true that
686 the said Illinois River Railroad Company, on a settlement with

Richard S. Thomas, since deceased, on the 30 & 31st days of January, 1862, upon a settlement of the accounts of the said Richard S. Thomas, president of said company, were found to be indebted in the sum of $16,502.24, for the payment of which, with interest thereon at ten per cent., the said Illinois River *Rirer* Railroad Company appropriated a sufficient amount of the said Morgan County bonds to pay the same at their market value, and authorized the said Thomas to receive the same, but no bonds were paid to said Thomas by said Elliott & Brown, the said claim of Richard S. Thomas having been subsequently paid in full to his administrator, *That* W. Thomas, under a decree rendered in the case of Blair et al. vs. The Illinois River Railroad Company, Morgan County, and others, as hereinafter more particularly set forth.

This respondent, further answering, says that it is true that in 1862 the Illinois River Railroad Company, failing to pay the interest on the bonds issued by said company as aforesaid, turned over the possession of the road and belonging to said company, with its appurtenances, to Lucius Hopkins and others, to be operated by them as trustees
687 for the bondholders, and said road was from the date of the transfer of the possession until the organization of the Peoria, Pekin & Jacksonville Railroad Company operated by said trustees, and since the organization of said company has been operated by the Peoria, Pekin & Jacksonville Railroad Company. But your respondent denies that any assets of the Illinois River Railroad Company, other than the appurtenances of the road, and especially denies that the Morgan County bonds, or any of them, were transferred to the said trustees for the use of the bondholders of the Illinois River Railroad Company. This respondent has no knowledge or information whether the resolutions purporting to be the resolutions of the directors of the Illinois River Railroad Company, relating to the transfer aforesaid, were passed by the said directors, and insists that the same shall be duly proven.

This respondent, further answering, says that it is true that no work was done at any time by the Illinois River Railroad Company in the construction of its road in Morgan County, and that in 1862 said Illinois Railroad Company was insolvent.

Your respondent, further answering, says it is true that suit having been brought against Messrs. Elliott & Brown to subject the
688 bonds deposited with them to the payment of the debts of the Illinois River Railroad Company, the said Elliott & Brown filed their bill of interpleader in the Morgan County circuit court to determine what disposition should be made of the said Morgan County bonds for their protection against vexatious and expensive litigation, and such proceedings were had that a decree was rendered by said court at its May term, 1866, in conformity with an opinion of the supreme court, in substance directing that the claims of Isaac Vail, and William M. Dodge, adm'r of Joseph Ladd, should be paid out of the proceeds of said Morgan County bonds at an ascertained value of forty or fifty per cent. of the nominal amount of said bonds, and allowing the county of Morgan to purchase and retire said bonds at the ascertained value by paying the claims of the said Vail and the estate of Joseph Ladd; and your respondent avers that said decree was executed by the payment, by Morgan County, of the said claim and the purchase of bonds from No. 8 to No. 42, inclusive, amounting to seventeen thousand & five hundred dollars, all of which was approved by said court; and this respondent avers that said decree is unreversed, together with the order approv-

689 ing the execution of said decree, all of which will fully appear by the record and files in said case, which are hereby referred to and made part of this answer; and your respondent further avers that said bonds, from No. 8 to No. 42, inclusive, $17,500, so taken up, were cancelled.

This respondent further avers that the decree rendered in said suit of Elliott and Brown directed that the Morgan County bonds not applied to the payment of said claims of Isaac Vail and the estate of Joseph Ladd should be deposited with Messrs. M. P. Ayers & Co. until the further order of the court, and that under said decree the Morgan County bonds, from No. 1 to No. 7, inclusive, and from No. 43 to 100, inclusive, were deposited with said Messrs. M. P. Ayers & Co., bankers, residing at Jacksonville, Illinois.

And your respondent further avers that at the term of the Morgan County court a suit was instituted by James Blair and other creditors of the Illinois River Railroad Company against Morgan county, the Illinois River Railroad Company, and others (it being a creditors' bill), to subject said Morgan County bonds, deposited with Messrs. M. P. Ayers & Co. as aforesaid to the payment of certain judgments recovered by the complainants in said creditors' bill. This respond-

690 ent admits that the names of the complainants in the suit of Blair and others set forth in the complainants' bill and the amount of their respective claims are correct; and your respondent avers, upon information and belief, that said claims were just and correct, and such proceedings were had in said suit that, at the September term, A. D. 1867, a decree was rendered directing the application of said bonds, so far as necessary, to the payment of the said judgments; a copy of which decree is herewith filed and made part of this answer.

And this respondent, further answering, says that under said decree sixty-five bonds (in nominal value $32,500.00), being bonds from No. 1 to No. 7 inclusive, and from No. 43 to 100 inclusive, were paid out in the execution of said decree by the special master in chancery to said judgment creditors of the Illinois River Railroad Company, which exhausted all the bonds originally issued to the Illinois River Railroad Company by Morgan County; all of which appears by the report of the said special master herewith filed and made part of this answer.

This respondent avers that the execution of the said decree as aforesaid was approved by the said Morgan circuit court; and said de-

691 cree, and the order approving the execution of the same, remain in full force and unreversed, as will more fully appear by the record and files in the said suit of Blair and others against Morgan County and others, which are hereby referred to and made part of this answer.

This respondent avers that, under an agreement made by the county of Morgan, through her solicitors, with the complainants in said suit of Blair and others vs. Morgan County & others, through their solicitors, the county of Morgan did, to wit, on the 27th day of November, A. D. 1867, purchase from said judgment creditors (complainants in said creditors' bill) the fifty-three Morgan County bonds from No.
by paying to said creditors six thousand dollars in said Morgan County bonds and six thousand dollars cash, and the right and interest of said judgment creditors in the remaining fifty-three Morgan County bonds was by said creditors released to the county of Morgan, and the same were deposited in the office of the clerk of the Morgan County court for cancellation.

This respondent avers that of the bonds so deposited in the office of the Morgan County clerk all were actually cancelled and destroyed

except the bonds numbered from 61 to one hundred inclusive,
692 amounting nominally to twenty thousand dollars.

And this respondent, further answering, avers upon information and belief that on or about the 28th day of July, 1869, parties claiming to act under the authority of the Morgan County court, without any consideration, gave the said bonds, from No. 61 to No. 100 inclusive ($20,000 in amount), to the Peoria, Pekin, and Jacksonville Railroad Company, a corporation organized under the laws of the State of Illinois, and delivered the same to Isaac L. Morrison, then acting for said railroad company, for the act of said company, one-half of which, $10,000.00, was by agreement between said Morrison and said railroad company retained by said Morrison for service in the premises, and the remaining half, $10,000 in amount, was delivered to John Allen, president of the Peoria, Pekin, and Jacksonville Railroad Company, and that before such delivery all the interest coupons maturing previous to the 1st March, 1869, were removed from said bonds and cancelled, and upon information and belief $9,000.00 in amount of said bonds still remain in the possession of the said Morrison, he having disposed of two bonds of the nominal value of one thousand dollars, and the remaining ten thousand dollars of bonds is still in the possession or under the
693 control of said John Allen for the use of said Peoria, Pekin & Jacksonville Railroad Company.

This respondent further states upon information and belief, that it is claimed that said $20,000.00 of Morgan County bonds, originally issued to the Illinois River Railroad Company, were delivered to the Peoria, Pekin & Jacksonville Railroad Company on the claim that such delivery was authorized by the county court of Morgan County and given in consideration that the road of the Peoria, Pekin & Jacksonville Railroad Company should be constructed from Virginia to Jacksonville, but your respondent avers that no order was ever made, nor was any authority ever given by the Morgan County court, to deliver said Morgan County bonds, or any of them, to the Peoria, Pekin & Jacksonville Railroad Company, nor did a majority of the county court of Morgan County ever agree verbally to give any of said Morgan County bonds to the said Peoria, Pekin & Jacksonville Railroad Company, and said $20,000 of bonds came to the hands of the said Morrison for the use of the said Peoria, Pekin and Jacksonville Railroad Company, without lawful authority, and without any good and valuable consideration.

This respondent admits it to be true that the names of the complainants in the creditors' bill of Blair and others against Morgan
694 County and others, and the amount of their respective claims at the date of the rendition of the decree in said case, was as set forth in complainants' bill, viz:

Assets at date of decree		$25,922 61.
Richard S. Thomas, including interest		25,922 61.
3,785.80.	Harvey O'Neal, Isaac Vail, & others, 3,560.[illegible] & costs	22 Nov., 1866.
204.13.	James Blair, $131.83 & 11.25 costs & int	1st Febr'y, 1859.
456.80.	Aaron Addis, 313.76 & 5.45 costs	June, 1860.
378.89.	George W. Dye, 269.00 & 5.95 costs	June, 1861.
278.80.	Henry Swift, 200.00 & 6.10 costs	Sept., 1861.
299.85.	Stephen Roney, 210.88 & 10.88 costs	Febr'y, 1863.
1,984.42.	Henry McKee, 1,911.53 & costs	23 Nov., 1864.
2,821.25.	A. and A. Haynes, 2,560 & costs	23 Nov., 1866.
751.43.	L. Schäffer, 700.63 & costs	23 Nov., 1866.
1,623.42.	And Reuben Bergstresser, 522.92 & costs	23 Nov., 1866.
385.88.	Benjamin Beesly, 350.88 & costs	23 Nov., 1866.
3,546.36.	Francis Low, including interest	3,546 36.

And this respondent avers, upon information and belief, that said claims at the date of the decree in the suit of Blair et al. vs. Morgan County et al. were just and unpaid.

This respondent, in further explanation of the trial and disposition of the said case of Blair et al., states upon information and belief, that it was proposed by the said complainants in said suit that if the county of Morgan would allow said suit to come to trial at the September
695 term, 1867, of the Morgan circuit court, and admit without controversy the allegations of complainants' creditors' bill, the said complainants would surrender and turn over to the county of Morgan the bonds received under the decree in consideration of twelve thousand dollars, one-half payable in said bonds at par, and the remaining half in cash, and that under the advice of its solicitors said proposition was accepted and carried out; the case was tried in form as an agreed case and the Morgan County bonds were taken up by the county of Morgan for cancellation, as hereinbefore stated, the county of Morgan having paid to said creditors of the Illinois River Railroad Company (the complainants in said suit of Blair & Co.) the twelve thousand dollars, in bonds and cash, as agreed on, which by express stipulation was to be in full satisfaction of their claims.

This respondent further answering says, upon information and belief, that while the Illinois River Railroad did, upon its failure to pay interest on their outstanding bonds, deliver the possession of its road to Lucius Hopkins and others, to be operated for the use of the holders of the bonds of the Illinois River Railroad Company, yet said corporation was not thereby dissolved.

696 This respondent not having had access to the record books of said company, cannot state what acts were done after 1862 by said Illinois River Railroad Company as a corporation, but said company did control and manage the assets not transferred to Hopkins and others, nothing being transferred to the said trustees but the road and its appurtenances, and that which was incident and appurtenant to the road.

And this respondent further avers upon information and belief, that Benjamin Prettyman, esq., who appeared for said company in the said suit of Blair et al., and who also appeared for said company in suits in which judgments were rendered in favor of some of the complainants in said suit of Blair & Co., was the vice president of the Illinois River Railroad Company and their acting attorney, and that such appearances were in good faith.

This respondent further answering, says upon information and belief, that by an act of the general assembly of the State of Illinois, passed , 1863, the Peoria, Pekin & Jacksonville Railroad Company was incorporated, and the Illinois River Railroad having been sold under a decree of the United States court for the southern district of Illinois foreclosing the trust deed given to
697 secure their bonds, the purchasers at said sale organized under said charter and have since constructed their road from Virginia, in Cass County, to Jacksonville, in Morgan County, and have since its completion operated said road from Pekin to Jacksonville; but this respondent denies that the said Morgan County bonds originally issued to the Illinois River Railroad Company or any part of the same were ever transferred or agreed to be transferred to Lucius Hopkins and others, trustees for the holders of the bonds of the Illinois River Railroad Company, and denies that said bonds or any of them were covered by the trust deed foreclosed as aforesaid, and claims that the Peoria,

Pekin & Jacksonville Railroad Company, or any person for their use, has any claim or right to said bonds or any of them, except what may be based as the allowed donation to the said company, the particulars of which are hereinbefore set forth, which donation is claimed by this respondent to be illegal and void.

And this respondent avers upon information and belief, that while the terms of the said act of 1863 give to said P., P. & J. R. Company no right to the bonds in controversy or any of them, or to any other personal assets of the Illinois River Railroad Company, the said act
698 of 1863 was drafted with express reference to escaping any liability for the then outstanding debts of the Illinois River Railroad Company on the part of the Peoria, Pekin & Jacksonville Railroad Company, and to escape such liability said Peoria, Pekin & Jacksonville R. Company avoided taking by the terms of said charter any of the property or assets of the Illinois River Railroad Company, other that the road and its appurtenances as described and set forth in the trust deed above referred to.

And this respondent, further answering, says it has no knowledge or information as to the alleged stipulation alleged to have been made by Lucius Hopkins and Alexander Studwell, and set out in the complainants' bill, and therefore insists that the same shall be proven.

Your respondent, upon information, admits it to be true that Lucius Hopkins, Alexander Studwell, and George T. Cobb, as trustees, set up no claim to the Morgan County bonds in controversy under the trust-deed executed to them by the Ill. R. R. Company, and having executed their trust, that they have no interest in said Morgan County bonds or any of them.

Your respondent, further answering, states upon information and belief that the Peoria, Pekin & Jacksonville R Company did complete
699 their road from Virginia, in Cass County, to Jacksonville, Illinois, but the completion of said road from Virginia to Jacksonville did not entitle the P., P. & J. R. Company to said Morgan County bonds nor any of them, and avers that said road was 'complete', because, without the completion of the said road to Jacksonville, the remainder of its road would have been but of little value to said P., P. & J. R. Co.; and again, for the completion of the said road to Jacksonville, said P., P. & J. R. Company claimed and obtained a subscription of fifty thousand dollars from the city of Jacksonville to the stock of said company, which was duly paid.

This respondent, with reference to the matters contained in said bill and amended bill and supplemental bill of said complainant, William Thomas, not hereinbefore admitted or denied, this respondent has no information or knowledge sufficient to enable respondent to answer specifically, and therefore, pro forma, denies the same.

And now your respondent, having fully answered, prays that it may be hence dismissed with costs, &c.

MORGAN COUNTY,
By EDWARD SCOTT,
County Judge.

[SEAL COUNTY COURT.]

JOHN TRABUE.
County Clerk, Morgan County, Illinois

700 Edward Scott on oath states that the foregoing answer and the matters and things therein contained are true so far as depends upon his own knowledge, and so far as depends upon the infor-

mation of others he believes the same to be true; and this affiant further states that he is the county judge of Morgan County.

EDWARD SCOTT.

Subscribed and sworn to before me this 25 June, 1873.

J. W. CALDWELL, *Clk.*

SPRINGER & DUMMER,
Sol'r for Co. of Morgan.

And afterwards, to wit, on the 19th day of July, A. D. 1873, there was filed in the clerk's office of the Morgan County circuit court a certain paper entitled "Answer of the county of Morgan to the cross-bill of Mahlon H. L. Schooley vs. The County of Morgan et al., in the case of William Thomas vs. County of Morgan et al.," which is in words and figures following, to wit:

Of the circ't court of Morgan County of the August term, 1873.

STATE OF ILLINOIS,
Morgan County:

701 Cross-bill filed in the case of William Thomas vs. Morgan County and others.

MAHLON H. L. SCHOOLEY
vs.
THE COUNTY OF MORGAN, IMPLEADER WITH others.

The answer of Morgan County to the cross-bill of complainant of M. H. L. Schooley.

This respondent, saving and reserving all exceptions to said complainant's cross-bill, and for answer to so much of the same as this respondent is advised it is necessary to answer, says: That respondent has no information as to the justness of the claims of the said Schooly as against the Illinois River Railroad Company, therefore require the same to be proven.

Your respondent denies that it is indebted to the Illinois River Railroad Company. This respondent admits that Morgan County did subscribed in 1857 fifty thousand dollars to the capital stock of the Illinois River Railroad Company, and bonds of the county of Morgan have been executed for the payment of the said subscription, and the same have all been paid out before the filing of complainant's cross-bill, under
702 decree of the Morgan County circuit court rendered in the case of Elliott & Brown vs. Morgan County et al., and the case of James Blair against Morgan County et al., in satisfaction of claims similar to the claims of complainant, the records and files in which cases are hereby referred to and made part of this answer, and for the history and details of the said subscription, and what became of the bonds, this respondent refers to the answer filed by respondent to the original bill of William Thomas, on file in this case, and here repeats overments and allegations of said answer touching the said subscription of stock, the issue of Morgan County bonds, and the history and final disposition of the same.

Your respondent has not sufficient information or knowledge of the action of the directors of the Illinois River Railroad Company to be enabled to state with accuracy the date of the last corporate acts of the

said Illinois River Railroad Company, but your respondent avers, upon information and belief, that the directors and officers of said company did control and manage assets belonging to said company, and the voluntary transfer of the road and its appurtenances to Lucius Hopkins and others, trustees, for the use of the holders of the outstanding
703 bonds of the Illinois R. R. Company; and your respondent further avers, upon information and belief, that said Ill. R. R. Company did own and control assets belonging to said company other than the bonds in controversy after said transfer and after the year 1862.

This respondent further avers that twenty thousand dollars of said Morgan County bonds originally issued to the Ill. R. R. Company, after the same were taken up by the county of Morgan under an agreement with the complainants in the said case of Blair et al. vs. Morgan County et al., under some claim of authority from the Morgan County court, were placed in the hands of Isaac L. Morrison for the use of John Allen, president of the Peoria, Pekin and Jacksonville Railroad Company, or for the use of said road, of which bonds nine thousand dollars of bonds remain in the possession or under the control of the said Morrison, and ten thousand dollars of said bonds remain in the possession or under the control of the said John Allen. And your respondent claims and avers that the delivery of said bonds ($20,000.00 in amount) was without authority, and illegal, and that said bonds should be restored to the custody of the county of Morgan.

This respondent therefore denies any liability to the said Mah-
704 lon H. L. Schooley, on account of said Morgan County bonds or otherwise, and prays that respondent may be hence dismissed with its costs, &c.

MORGAN COUNTY,
By EDWARD SCOTT,
County Judge.
[COUNTY SEAL] JOHN TRABUE,
County Clk.

SPRINGER & DUMMER,
Sol'r for Co. of Morgan.

And on this same day, to wit, on the 19th day of July, A. D. 1873, there was filed in the clerk's office of the Morgan circuit court a certain paper entitled "answer of the county of Morgan to the cross-bill of Benjamin H. West vs. Morgan County et al., in the case of William Thomas vs. County of Morgan et al.," which answer is in words and figures following, to wit:

Of the August term, A. D. 1873, of the Morgan circuit court.

STATE OF ILLINOIS,
Morgan County.

Cross bill filed in the case of William Thomas vs. Morgan County et al.

BENJAMIN S. WEST
vs.
THE COUNTY OF MORGAN, IMPLEADER WITH others.

705 The answer of Morgan County to the cross-bill of Benjamin S. West.

This respondent, saving and reserving all exceptions to said complain-

ant's cross-bill, for answer to so much of the same as this respondent is advised it is necessary to answer, says that respondent has no information as to the justness of the claim of the said West against the Illinois River Railroad Company, and therefore desires that the same shall be proven.

Your respondent desires that it is indebted to the Illinois River Railroad Company. This respondent admits that Morgan County did subscribe, in 1857, fifty thousand dollars to the capital stock of the Illinois River Railroad Company and bonds of the county of Morgan were executed for said sub-cription, and paid out to the extent of the whole amount of $50,000.00 in satisfaction of claims against the Illinois R. R. Company, exactly similar in character to the claims of the complainant West, before the filing of his cross-bill under decree of the Morgan County circuit court, rendered in the cases of Elliott & Brown vs. Morgan County et al. and James Blair et al. vs. Morgan County et al., the records and files in which cases are hereby referred to and made
706 part of this answer, and for the history of said subscription and what became of the Morgan County bonds this respondent refers to the answer filed by respondent to the original bill of William Thomas in this case, and here repeats the averments and allegations of said answer touching the said subscription, the issue of Morgan County bonds and the history and the disposition of the same.

Your *de*spondent further answering says it has no sufficient knowledge or information of the action of the directors of the Illinois River R. Company to be enabled to state with any decree of accuracy the date of the last corporate acts of the said Illinois River Railroad Company, but your respondent avers upon information and belief that the directors and officers of said I. R. Railroad Company did control and manage assets belonging to said company after the voluntary transfer of the said company and its appurtenances to Lucius Hopkins and others, trustees for the use of the holders of the bonds of said Ill. R. R. Company, and your respondent further avers upon information and belief that the said Illinois R. R. Company did own and control assets belonging to said company other than the bonds in controversy after the year 1862.

This respondent further avers that twenty thousand dollars of
707 said Morgan County bonds originally issued to the Ill. R. R. Company, after the same were taken up by Morgan County under an agreement made with the complainants in the said case of Blair et al., vs. Morgan County et al., under some claim of authority from the Morgan County court, were placed in the hands of Isaac L. Morrison for the use of John Allen, president of the Peoria, Pekin & Jacksonville Railroad Company, or for the use of said company, of which bonds nine thousand dollars remain in the possession or under the control of the said Morrison, and ten thousand dollars of the same remain in the possession or under the control of the said John Allen, and your respondent claims and avers that the delivery of said bonds ($20,000 in amount) was without authority and illegal and that said bonds should be restored to the custody of the said county of Morgan.

This respondent, therefore, denies any liability to the said B. S. West

on account of said bonds or otherwise and prays that this respondent may be hence dismissed with its reasonable costs, &c.

MORGAN COUNTY,
By EDWARD SCOTT,
County Judge.

[COUNTY SEAL.] JOHN TRABUE,
Co. Clk.

SPRINGER & DUMMER,
Sol. for Co. of Morgan.

708 And afterwards, to wit, on the 8th day of May, A. D. 1876, a certain report of sale was approved by the circuit court of Morgan County, said court being then and there duly organized, in a certain cause entitled Morgan County vs. The Peoria, Pekin & Jacksonville Railroad Company and others, which report was duly entered of record and is in words and figures following, to wit:

THE COUNTY OF MORGAN
against
PEORIA, PEKIN & JACKSONVILLE RAILROAD Company & others. } No. 177. In chancery.

On this day Henry Stryker, jr., master in chancery, presented his report of action under the decree in this cause in the words following:

To the Hon. Cyrus Epler, judge of the circuit court of Morgan County, Illinois:

I, Henry Stryker, jr., master in chancery of Morgan County, Illinois, report that in pursuance of a decree of the circuit court of said county, State aforesaid, rendered at the Sept. special term, A. D. 1873, in the case of The County of Morgan, complainant, against The Peoria,
709 Pekin & Jacksonville Railroad Company and others, defendants, after having duly advertised the sale of the bonds ordered to be sold in said decree, according to law and the decree, by publication of the notice of sale, giving the title of said case, the time, terms, and place of sale, and description of the bonds, for 4 consecutive weeks, in the Illinois Sentinal, a weekly secular newspaper of general circulation, published in the city of Jacksonville, county and State aforesaid, the dates of the first and last papers containing the same being respectively December 16, 1875, and January 6, 1876, a printed copy of said notice, with the publisher's certificate of such publication thereto annexed, being hereto attached and made a part of this report, I did, on the 8th day of January, 1876, at the hour of 2 o'clock p. m. of said day, at the south door of the court-house, in the city of Jacksonville, in Morgan County, Illinois, strike off and sell at public auction, to the highest and bidder for cash, the following-described bonds, num bered 61 and 62, executed by Morgan County to the Illinois River Railroad Company, for $500 each, dated September 10th, 1857, payable March 1st, 1877, bearing interest at the rate of six per cent. per annum, payable
710 annually, with interest coupons payable March 1, 1870, and annually thereafter to March 1, 1877, both inclusive; also two coupons, due respectively March 1st, 1870, and March 1st, 1871, from bond No. 63, same issue as above, as follows:

Bond No. 61, with i's coupons as aforesaid, to Alice S. Rhoads, for $675, she being the highest and best bidder therefor, and that sum being the

highest and best bid offered at said sale; bond No. 62, with its coupons as aforesaid, to Morgan County, for $670, she being the highest and best bidder, and said sum being the highest and best bid offered therefor at said sale.

The two coupons from bond No. 63 I offered separately, but failing to receive or obtain a bid, I offered them together, and struck off and sold them to the county of Morgan for the sum of forty-five ($45) dollars, she being the highest and best bidder, and said sum being the highest and best bid offered at said sale.

With the cash received at said sale I paid the clerk of this court $18.40, the amount of costs taxed; the publishers of said newspapers $5.00 for publishing said notice; retaining $26.60 for my fees and commissions; paying Wm. Thomas, the attorney, M. H. L. Schooley, and Benjamin H. West thirteen hundred thirty nine $\frac{61}{100}$ (1,339.61)
711 dollars, in full of their decree and interest, and having on hand a surplus of 39 cents, and also bond No. 63, with coupons payable March 1, 1872, to March 1, 1877, both inclusive.

I further report that the following items of cost should have been taxed and paid from the proceeds of this sale, to wit, $31.70, costs paid by Morgan County to the former clerk of this court, after the first decision of the supreme court in the case of William Thomas against The County of Morgan and the P., P. & J. R. R. Company; also ten dollars costs for taking the depositions of M. H. L. Schooley, in Missouri, and James Ruggles, at Havana; also ten dollars for a copy of the last opinion of the supreme court in this case, the last two tens being due William Thomas, and all omitted by oversight.

I attach vouchers for my said payments, and make them a part of this report.

Dated this 8th day of May, 1876.

HENRY STRYKER, JR.,
Master in Chancery.

Which, being examined, is approved by the court; and it appearing that in copying the bills of costs the clerk omitted $31.70 cents paid by the county and items of $20 payable to William Thomas, it is or-
712 dered that the master cut off and deliver to the clerk of Morgan County court a sufficient amount of the interest warrants on the bond in his possession to pay, at their face, the said sums.

STATE OF ILLINOIS,
Morgan County:

I, Joseph W. Caldwell, clerk of the circuit court within and for the county of Morgan, in the State aforesaid, do hereby certify that the foregoing 67 pages contain full, true, and complete copies of: 1st, a certain paper entitled "the answer of Morgan County in the case of Elliott & Brown vs. Morgan County, Richard S. Thomas et al."; 2nd, a certain paper entitled a "cross-bill in case of Morgan County vs. Richard S. Thomas et al."; 3rd, a certain paper entitled "amended answer of Morgan County in case of Richard S. Thomas vs. Morgan County et al."; 4th, a certain paper entitled "answer of Morgan County in case of James Blair vs. Ill. R. R. R. Co. et al."; 5th, a certain paper entitled "separate answer of The County of Morgan in the case of William Thomas vs. The County of Morgan et al."; 6th, a certain paper entitled "Answer of the County of Morgan to the cross-bill of Mahlon H.
713 L. Schooley vs. The County of Morgan et al. in the case of William Thomas vs. Morgan County et al."; 7th, a certain paper en-

titled "answer of Morgan County to the cross-bill of Benjamin H. West vs. Morgan et al., in the case of William Thomas vs. Morgan County et al."; and 8th, the master's report of sale in a certain cause entitled "The County of Morgan vs. The Peoria, Pekin and Jacksonville Railroad Company et al."; and that the dates of filing and orders of court are as therein stated, as fully and completely as the same appear from the files and records of my said office.

In testimony whereof I hereto subscribe my name and attach the seal of said court, at my office in Jacksonville, Morgan County, State of Illinois, this 5th day of July, A. D. 1876.

[L. S.] JOS. W. CALDWELL, *Clk.*

Fees for record, $18.00.

(Indorsed:) Exhibit 4. Henry Stryker, jr., special commissioner.

(Also indorsed:) Filed Sept. 14, 1876. J. A. Jones, clerk.

714 *Exhibit 5.*

No. 26.] UNITED STATES OF AMERICA. [$500.

STATE OF ILLINOIS, COUNTY OF MORGAN.

Six per cent. loan for subscription to the capital stock of the Illinois River Railroad Company, ($50,000.)

Be it known that the county of Morgan in the State of Illinois owes to the Illinois River Railroad Company five hundred dollars, which sum the judge and associate justices of said county, having been duly authorized by a majority of the qualified voters of said county, therefore promise to pay to the said Illinois River Railroad Company or its assigns at the American Exchange Bank in the city of New York upon the surrender of the annexed interest warrants signed by order of the said judge and associate justices of said county court of said county, by Mat. Stacy, clerk of said county.

This obligation issued in part payment of a subscription of five hundred shares of one hundred dollars each of the capital stock of said Illinois River Railroad Company made by the said judge
715 and associate justices of said county court of said county, on behalf of said county, by authority of an act of the general assembly of the State of Illinois, approved November 6th, 1849, and of a vote of the qualified voters of said county taken in pursuance thereof.

In testimony whereof we, the judge and associate justices of said county court of said county of Morgan in the State of Illinois, have hereunto set our hands and affixed the seal of said county this tenth day of September, A. D. 1857.

JAS. BERDAN,
I. P. BENNETT,
J. B. DUNCAN,
Judge of the County Court & Associate Justices of the County of Morgan, State of Illinois.

Attest:
[SEAL.]

MAT. STACY,
Clerk of the County.

Interest warrant No. 20 of bond No. 26.

The county of Morgan in the State of Illinois will pay to the holder hereof at the American Exchange Bank in the city of New York on the first day of March, A. D. 1877, thirty dollars for interest due on
716 that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 19 of bond No. 26.

The county of Morgan in the State of Illinois, will pay to the holder hereof at the American Exchange Bank in the city of New York on the first day of March, A. D. 1876, thirty dollars for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 18 of bond No. 26.

The county of Morgan in the State of Illinois will pay to the holder hereof at the American Exchange Bank in the city of New York on the first day of March, A. D. 1875, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

717 By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 17 of bond No. 26.

The county of Morgan in the State of Illinois will pay to the holder hereof at the American Exchange Bank in the city of New York on the first day of March, A. D. 1874, thirty dollars for interest due on that day on bond No. 26, issued for subscription to the Illinois River Railroad Company.

By order of the county court of the County of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 16 of bond No. 26.

The county of Morgan in the State of Illinois will pay to the holder hereof, at the American Exchange Bank in the city of New York on the first day of March, A. D. 1873, thirty dollars, for interest due on that day *on that day* on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

718 MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 15 of bond No. 26.

The county of Morgan in the State of Illinois will pay to the holder hereof at the American Exchange Bank in the city of New York on the first day of March, A. D. 1872, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 14 of bond No. 26.

The county of Morgan in the State of Illinois will pay to the holder hereof at the American Exchange Bank in the city of New York on the first day of March, A. D. 1873, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

719 Interest warrant No. 13, of bond No. 26.

The county of Morgan, in the State of Illinois, will pay to the holder hereof at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1870, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 12, of bond No. 26.

The county of Morgan, in the State of Illinois, will pay to the holder hereof at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1869, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

720 Interest warrant No. 11, of bond No. 26.

The county of Morgan, in the State of Illinois, will pay to the holder

hereof at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1868, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 10, of bond No. 26.

The county of Morgan, in the State of Illinois, will pay to the holder hereof at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1867, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

721 Interest warrant No. 9, of bond No. 26.

The county of Morgan, in the State of Illinois, will pay to the holder hereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1866, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 8, of bond No. 26.

The county of Morgan, in the State of Illinois, will pay to the holder hereof, at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1865, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 7, of bond No. 26.

722 The county of Morgan, in the State of Illinois, will pay to the holder hereof at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1864, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 6, of bond No. 26.

The county of Morgan, in the State of Illinois, will pay to the holder hereof at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1863, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 5, of bond No. 26.

723 The county of Morgan, in the State of Illinois, will pay to the holder hereof at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1862, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

Interest warrant No. 4, of bond No. 26.

The county of Morgan, in the State of Illinois, will pay to the holder hereof at the American Exchange Bank, in the city of New York, on the first day of March, A. D. 1861, thirty dollars, for interest due on that day on bond No. 26, issued for subscription to the stock of the Illinois River Railroad Company.

By order of the county court of the county of Morgan, State of Illinois.

MAT. STACY,
Clerk of the County of Morgan.

724 STATE OF ILLINOIS,
Morgan County, ss:

I, Samuel M. Martin, clerk of the county court within and for the county in the State aforesaid, do hereby certify that the foregoing is a true, perfect, and complete copy of bond No. 26, issued by the county of Morgan to the Illinois River Railroad Company, and that like bonds numbered from No. 8 to No. 26, both inclusive, were issued by said county of Morgan to said railroad company, as they now fully appears of record in my office.

In witness whereof I have hereunto set my hand and official seal at Jacksonville, this 16th day of March, A. D. 1876.

[SEAL.] SAMUEL M. MARTIN,
County Clerk.

(Indorsed:)

No. 26. $500.00.

Six per cent. bond of the county of Morgan, State of Illinois, for subscription to the stock of the Illinois River Railroad Co., redeemable first day of March, 18 .

Interest payable at the American Exchange Bank, city of New York, 1st day of March.

Cancelled June 9th, 1866.

H. G. WHITLOCK,
County Judge.

725 MORGAN COUNTY, ILLINOIS.

(Also indorsed:) Filed Sept. 14, 1876. J. A Jones, cl'k.

EXHIBIT NO. 6.

Deposition of Edward R. Elliott, taken before me, Henry Stryker, jr., a notary public for the town of Jacksonville, County of Morgan, and State of Illinois, at my office in said town on the 22d day of June, 1865, by consent of counsel to be read in evidence in the trial of a certain cause now pending in chancery in the circuit court of said county, wherein Richard S. Thomas is complainant and the county of Morgan is the defendant, said deposition taken at the instance of the

EDWARD R. ELLIOTT, having been by me first duly sworn, according to law, answered the following interrogatories in the words following:

Int. 1st. Will you please examine the letter of Messrs. Elliott & Brown of the date of the 17th of Dec'r, 1857, and state whether or not that letter expressed the true state of the case in relation to the delivery of the bonds in controversy to the Illinois River Railroad Company by Morgan County?

726 Ans. 1st. It does, as I understand it. I ask to submit this paper as containing a statement of my recollection of the matter in controversy, and I mark it Exhibit A.

Interrog. 2d. Was or was not the interest coupon payable March, 1858, detached from all the bonds before delivery; &, if so, by whom & why?

Ans. 2d. It was detached by myself and young Roper or John Ward, who was in the bank at the time, and they were destroyed; it was done by order of Judge Berdan, the reason assigned was that the county did not wish to pay interest before the work was begun in the county.

Cross-examination:

Int. 3. Did you write the letter referred to in your first answer above; if not, who did write said letter?

Ans. 3, I did not; Judge Brown wrote it.

Int. 4th. Were you present at any interview between the county court of Morgan County and Richard S. Thomas, president and general superindent of the Illinois River Railroad Company, in regard to the so-called Morgan County bonds, and do you know what was the understanding between Judge Berdan and the other judges & said

727 Thomas in regard to depositing the same with Elliott & Brown?

(Above question objected to by all the parties to this suit except the county of Morgan.)

Ans. 4. I was not; my recollection & impression are from the parties separately and at different times; I do not know of any understanding between said judges and said Thomas as to the depositing of said bonds with Elliott & Brown from any conversation or intervie with them collectively.

Int. 5. Did you ever have any instructions of Judge Berdan in regard

to the delivery of said so-called bonds after the *the* same were first deposited with Elliott & Brown?

(Above question objected to by same parties as above.)

Ans. 5. I do not remember of receiving any.

Int. 6. Is not your recollection in regard to the bonds in question more from what occurred, generally, while the judges of the county court were signing the bonds at the office of Elliott & Brown, than from any specific instructions or directions received from Judge Berdan? If you remember any specific interview with Berdan, at which he directed the bonds to be delivered upon the receipt of the certificate of stock, state it.

728 (Above question objected to by same parties as above.)

Ans. 6th. My recollection is from the delivery of the bonds and the instruction of Berdan at the time the bonds were signed and completed and ready for delivery.

Int. 7. Do you know anything about any of the coupons of the so-called Morgan County bonds having been taken off and paid; if so, by whom, by whose directions?

Ans. 8th. My understanding is that some authorized agent of the county, after March, 1859, deposited money at the bank to the credit of the railroad company, and took the coupons, and the same thing was done with the coupons in 1860, I know this from the books; I was not present at the time, that I recollect.

Int. 9. You have spoken of notice to Elliott & Brown by Judge Cassell, then county judge of Morgan County, Illinois, of the claim of the county to the bonds in question. State, if you please, the date as near as you can, the date of notice, and was it or not before the payment of any coupons by the officers of said county?

(Above question objected to by same parties as above.)

729 Ans. 9th. I believe it was in the latter part of 1858, or early part of 1859, & before the coupons were paid.

E. R. ELLIOTT.

The foregoing depositions were taken before me in pursuance of a stipulation signed by all the att'ys in said case, which stipulation has been mislaid by me. Formal certificates waived.

HENRY STRYKER, JR.,
Notary Public.

The ten exhibits attached are the exhibits referred to in his answer to question one.

H. STRYKER, JR.

[E. R. Elliott, Exchange and Banking Office. Wm. Brown, of Elliott & Brown.]

JACKSONVILLE, ILL., *Dec. 17th*, 1857.

Doct. M. H. L. SCHOOLEY,
Sec'y Illinois River Railroad Company, Virginia, Illinois:

DEAR SIR: Yours of 10th inst., inclosing a certificate for 500 shares of stock in the Ill. Riv. Railroad Company in favor of Morgan County, & also a certificate of board on the same subject.

The court of this county directed the 1st coupon to be cut off,
730 and then the bonds to be delivered to order of your board upon receipt of certificate of stock as above. Accordingly we certify that we hold $50,000 Morgan County bonds w th 1st coupon cut off, subject to order of the board of directors of the Illinois River Railroad Company.

Respectfully,

ELLIOTT & BROWN.

Report marked Exhibit A referred to witness Elliott.
H. STRYKER, JR., *N. P.*

In relation to Morgan County bonds issued in favor of Illinois River Railroad, my recollection is that the bonds were left with Elliott & Brown by Judge Berdan, with verbal instructions to deliver the same to the railroad company upon the receipt of the company's certificate of stock in favor of Morgan County, to the amount of the bonds; and in order to consum'ate the business during the term of the then existing court (which would soon expire), the said Elliott & Brown were to inform R. S. Thomas, president of the company, that if they had not received their engraved or printed certificate, a written certificate might be left for which the engraved or printed certificate was to be substituted when received by the company. The time at which the
731 above instructions were given and bonds left is so remote (I think in the fall or early winter of 1857) that I cannot be certain of the identical words, but of their impression and import I am clear and distinct. In accordance with instructions as they understood them, Elliott & Brown under letter acknowledged receipt of certificate, and continued to hold bonds for railroad company. After this—how long I cannot say precisely—but not a great while, and while the bonds were in the possession of Elliott & Brown, held, as they understood, subject to the order of the railroad company, they were notified or instructed by Judge Cassell not to surrender the bonds to the railroad company; which is set forth with the reason therefor in bill prepared for and deposed to by Elliott & Brown, which bill grew out of garnishee process served on Elliott & Brown by creditor of railroad, and in which bill Elliott & Brown made all claimants known to them to bonds or to interests therein, parties asking for relief for themselves, and that claimants might answer, &c.

Now, so much of allegations contained in said bill as has reference to notification, instruction, action, &c., of Judge Cassell, successor of Judge Berdan, I ask to be received as my testimony,
732 and as furnishing the reason why Elliott & Brown, or Wm. Brown, successor of Elliott & Brown, refused to deliver the bonds or part of them upon the orders of company so to do. It was always my understanding from the beginning of this matter that the bonds or their proceeds would be faithfully applied upon estimates for work done in Morgan County; certainly I was so informed by R. S. Thomas, and from the fact that during the filling up of blanks in bonds (which was done by myself) and sign ng by Judge Berdan and authenticating of clerk, we conversed freely about them; I feel morally certain that I was so informed by Judge Berdan—such is my cand d impression; but that any conditions were connected with the reception of bonds for delivery to railroad, other than the receiving of certificate of stock as mentioned, I cannot think. With regard to certificate of stock (witness' certificate) received from railroad company, I supposed it was in possession of proper county officer, and was surprised while collecting facts for above bill to find that it still remained in possession of Elliott & Brown, or Mr. Brown, their successor, enclosed in envelope and lodged in drawer which contained paper not the property of
733 Elliott & Brown, or Wm. Brown, their successor.

In conclusion I would refer to additional testimony furnished by Wm. Brown as to information given to Elliott & Brown by R. S. Thomas. I have heard Wm. Brown read the same, and I ask that it be received as my testimony upon the points contained therein.

William Brown states that in taking his testimony before Judge Woodson, the questions propounded to develop his knowledge upon points (within its range) deemed important to the several parties to the suit seem to him to have precluded so full a statement as would have been proper, and therefore he wishes to add to his former statements the following, viz:

That in August, 1857, R. S. Thomas informed E. R. Elliott and himself that he thought it desirable that Morgan County should be represented at the election of directors to be held early in the next month, Sept. 1, and enquired whether she would issue the bonds to the Illinois River Railroad Company to attain that object. He informed them that the bonds would be placed in their hands to be paid out as subscriptions of other subscribers in Morgan on estimates for work in Morgan.

734 That the contract of Allen & McGrady with Ill. River Railroad Company provided that the Morgan County bonds were to be used for work done in Morgan County and not elsewhere, and that the directors would pass any necessary order that the bonds should only be used in Morgan.

The additional testimony of Wm. Brown herein contained is received subject to exceptions as to relevancy & admissibility.

H. STRYKER, JR., *N. P.*

(Indorsed:) Depositions of E. R. Elliott, and additional testimony of Wm. Brown. Exhibit 6. Henry Stryker, jr., special commissioner.

(Also indorsed:) Filed Sept. 14, 1876. J. A. Jones, clerk.

EXHIBIT No. 7.

Ordered that the president and secretary issue to Morgan County a certificate of stock for five hundred shares in the capital stock of the Illinois River Railroad Company, and deliver the same into the

735 hands of the treasurer, agent, or attorney of said county, and receive therefor fifty thousand dollars, in county bonds of said county, payable to said railroad company, according to the vote of the legal voters of said county; and further, that they deposit the bonds so received with Elliott & Brown, bankers, Jacksonville, and take their certificate of deposit therefor, in such form as that they shall only be authorized to deliver the same up according to the order of this board.

I, M. H. L. Schooley, secretary of the Illinois River Railroad Company, certify that the foregoing is a full and true copy of the order of the board of directors, as passed by them at Jacksonville during their meeting held at said Jacksonville on the 2d, 3d, 4th, and 5th days of December, A. D. 1857.

Given under my hand and seal of said railroad company, at Virginia, this tenth day of December, A. D. 1857.

[SEAL.] M. H. L. SCHOOLEY,
Sec'ty I. R. R. R Co.

(Indorsed:) Exhibit 7. Henry Stryker, jr., special commissioner. Filed May 24, 1865. S. Sutton, cl'k.

(Also indorsed:) Filed Sept. 14, 1876. J. A. Jones, cl'k.

736 Be it remembered that on the 28th June, A. D. 1870, a certain bill in chancery was filed with the clerk of our said court, in the case of County of Morgan vs. The Peoria, Pekin & Jacksonville Railroad Company, which bill is in the words and figures following, to wit:

EXHIBIT 8.

STATE OF ILLINOIS,
Morgan County, ss:

In the circuit court thereof, August term, A. D. 1870.

THE COUNTY OF MORGAN, COMPLAINANT,
vs.
THE PEORIA, PEKIN & JACKSONVILLE RAILroad Company, defendant.

Bill to enforce the collection of certain county bonds.

To the Hon. Charles D. Hodges, judge of the first judicial circuit:

Your orator, humbly complaining, showeth unto your honor that in the year 1857 a subscription was made by the county of Morgan to the capital stock of the Illinois River Railroad Company of fifty thou-
737 sand dollars, and for the payment of said subscription one hundred bonds of the county of Morgan, each of the denomination of five hundred dollars, dated 1st of September, 1857, and payable twenty years after date, with six per cent. interest per annum, as set forth in interest coupons attached, numbered from N' 1 to No. 100, inclusive, was issued to the Illinois River Railroad Company by the county of Morgan.

And your orator further showeth unto the court that, by an arrangement made by the county of Morgan with the Ill. River Railroad Company, a railroad corporation then duly organized under laws of the State of Illinois, all of said bonds were deposited with Messrs. Elliott & Brown, bankers, at Jacksonville, in payment of said subscription of stock, with the stipulation that none of said bonds should be paid out except upon work done upon the Illinois River Railroad in Morgan County; upon the making of which deposit certificates for fifty thousand dollars of stock of the Illinois River Railroad Company were issued and delivered to Messrs. Elliott & Brown, bankers, for Morgan County.

And your orator further showeth unto the court that no work was ever done by the said Illinois River Railroad Company on their
738 road in Morgan County, and said company became insolvent; and suit having been brought against said depositaries to subject the said bonds deposited with them as aforesaid to the payment of the outstanding debts of the said Ill. R. R. Road Company, Edward R. Elliott and William Brown, constituting said firm of Elliott & Brown, instituted a suit at the term of the Morgan circuit court, asking the court to determine the rights of the parties, and render a decree disposing of the bonds in which they had no interest, thus protecting them against expensive & vexatious litigation. And such proceedings were had in said suit that afterwards, at the term of said court, a decree was rendered that part of said bonds, to wit, 35, numbering No. from 8 to No. 42, inclusive, amounting to $17,500, were paid out in satisfaction of certain creditors of the Illinois River Railroad Company, and subsequently bought in by the county of Morgan and cancelled; and the remainder of said bonds were deposited with Messrs. M. P. Ayers & Co., bankers, to await such disposition of them as the law might determine.

And your orator further showeth unto the court that afterward, to wit, at the term of the Morgan circuit court, a suit was brought by
739 James Blair et al., creditors of the Ill. R. R. Road Company,

against Morgan County, the Illinois R. R. Road Company & others (it being a creditors' bill,, to apply said bonds to the payment of their judgement claims against said company; and such proceedings were had in said suit that afterward, to wit, at the September term, A. D. 1867, a decree was rendered directing the application of said bonds, so far as necessary, to the payment of the said judgment debts, a copy of which decree is herewith filed, marked Exhibit A, and made a part of this bill. And your orator avers that under said decree sixty five Morgan County bonds, $32,500 in nominal value, being boads numbered from No. one to No. 7, inclusive, and from No. 43 to 100, inclusive, were paid out by the special master appointed to execute said decree to said judgment creditors of the Ill. River Railroad Company, which ex'austed all the bonds originally issued to the Ill. River Railroad Company as aforesaid, which will more fully appear by the report of the said special master in chancery, a copy of which is hereto attached, marked Exhibit B, and made a part of this bill.

And your orator further showeth unto the court that under an agreement made by the county of Morgan with said judgment
740 creditors the said county of Morgan did, to wit, on the 27th day of November, A. D. 1867, purchase from said judgment creditors of the bonds delivered to them as aforesaid fifty-three bonds, being bonds numbered from No. sixty-one to 100, inclusive; No. 1–7, inclusive, & fifty five to 60, inclusive; and *the* consideration of the sum of six thousand dollars paid by the county of Morgan said fifty-three bonds were released by said cred'itors to the said county of Morgan, and so were taken up, paid, and satisfied by the county of Morgan.

And your orator further showeth unto the court that of the bonds so paid and taken up thirteen, to wit, bonds numbered from No. 1 to 7, inclusive, & No. 55 to 60, inclusive, were cancelled and d*i*stroyed, as will more fully appear by an order of record of the county court of Morgan County, which is hereto attached, marked Exhibit C, and made a part of this bill.

Your orator avers that some party or parties unknown to your orator, claiming to act under the authority of the Morgan County court, on or about the 28th day of July, A. D. 1869, combining and confederating with the Peoria, Pekin & Jacksonville Railroad Company, an
741 existing corporation legally organized under the laws of the State of Illinois, and now operating a road from Peoria to Jacksonville, has delivered of the bonds taken up and paid as aforesaid, to wit, the bonds of the county of Morgan, originally issued as hereinbefore set forth, to the Illinois River Railroad Company, forty in number, amounting to twenty thousand dollars, numbered from No. 61 to No. 100, inclusive, with interest coupons attached, for the payment of interest from the 1st of March, 1868; and your orator avers that the delivery of the said bonds to said company was without consideration or authority, illegal, and in fraud of the rights of your orator, yet said Peoria, Pekin, & Jacksonville Railroad Company claim that said forty (40) bonds, the principal and interest which the county of Morgan is legally bound to pay.

Your orator further shows unto the court that the said Peoria, Pekin & Jacksonville Railroad Company give out and pretend that the said bonds (twenty thousand dollars) were transferred to said company by the order of the county court of Morgan County, and that said transfer and delivery of said bonds was authorized and made valid by the
742 provisions of an act of the general assembly of the State of Illinois, entitled "An act to amend the several acts incorporating

the Peoria, Pekin & Jacksonville Railroad Company," approved March 10th, 1869, which sections are in the words following, to wit:

"Counties, cities, and towns, and townships, whether incorporated or unincorporated, situated on the line of said road, or at either or any of its termini, are 'hereby authorized to make gifts, grants, or donations of personal or real estate to said company upon such terms as may be agreed upon between the parties.'" And section 10 of said act reads as follows: "The county bonds of the county of Morgan issued for subscription to the capital stock 'of the Illinois River Railroad Company, and made payable to said company or bearer, and which may be delivered to the Peoria, Pekin and Jacksonville Railroad Company, are hereby declared legal and valid, and legally deliverable to the last-named company on the construction of the road of said company to Jacksonville.'"

And now your orator expressly charges that the action of the county court of Morgan County never did authorize the donation and
743 transfer of said bonds to said company, and avers that there is no order of record in the Morgan County court, nor any memorandum on file evidencing an authority to make such donation and transfer, and such transfer and delivery of said bonds *as* without authority and not binding upon the county of Morgan.

And your orator further expressly charges that said bonds so delivered to the Peoria, Pekin and Jacksonville Railroad Company were delivered without any consideration; that the said Peoria, Pekin & Jacksonville Railroad Company, under their charter, had no claim on the assets belonging to the Illinois River Railroad Company.

And your orator further avers that the subscription to the capital stock of the Illinois River Railroad Company was fully paid by bonds, and the bonds, fifty thousand dollars in amount, have been taken up and discharged.

And your orator further charges the fact to be that said twenty thousand dollars of bonds delivered as aforesaid to the Peoria, Pekin and Jacksonville Railroad Company were bonds that at the time of their coming into the possession of said company were no longer
744 valid obligations against the county of Morgan because of their having been taken up and discharged, and that said bonds, though not literally mutilated and cancelled, were legally cancelled.

And your orator further avers that the sections of the said act approved March 10th, 1869, hereinbefore set forth, or so much of said sections as set forth, are not valid and binding, and said sections of said act do not constitute a legal authority for the delivery of said bonds to the said Peoria, Pekin & Jacksonville Railroad Company; first, because nothing in the title to said act indicated the enactment of any such provision as the donation and delivery of the said twenty thousand dollars of bonds to said company, and is within the meaning and intent of the 23 section of article 3 of the constitution of 1848, which provided that no private law shall embrace more than one subject, and that shall be embraced in the title. And your orator avers that the general assembly of the State of Illinois has no constitutional authority to require or authorize the donation of county bonds by the county of Morgan to a private railroad corporation, and any action under such statutory provision is not binding on the county of Morgan. And your orator
745 avers that the said bonds were delivered to said Peoria, Pekin & Jacksonville Railroad Company, with a full knowledge of the facts hereinbefore set forth; that said transaction was, on the part of the said company, a fraud upon the rights of your orator; that the posses-

sion of the said bonds by said company may subject your orator to vexatious and expensive litigation, at a distance of time when the evidence necessary to the enforcement of the rights of your orator in the premises may be lost or obscured or they may be used to the injury of third persons.

And your orator further shows to the court that said defendant at times pretends and claims that the county of Morgan has paid the interest on said twenty thousand dollars of bonds for the year ending March, 1869, and has thus ratified the delivery of said bonds; whereas your orator avers and charges that no interest on said bonds has ever been paid to the said Peoria, Pekin and Jacksonville Railroad Company, nor any person claiming under said company, and whatever interest coupons has been paid have been paid under circumstances and to parties
746 that furnish no ground for the pretence that the delivery of the said bonds had been ratified by your orator.

To the end therefore that cause may be shown be defendant, if any cause there be, why your orator should not have relief in the premises, the said defendant is hereby required to answer on oath and according to the best of defendant's knowledge, remembrance, information, & belief, touching all and singular the allegations and charges aforesaid, as fully as if specially interrogated thereto, and more especially that defendant make true, full, and perfect answer to the following interrogatories:

Int. 1. Did you or not at some time in the year 1869 obtain possession or control of bonds of the county of Morgan; and, if so, from whom obtained, to what amount, the description and number of the bonds, and for what consideration paid or agreed to be paid, and on what ground defendant claims to hold said bonds as valid claims against the said county of Morgan? Did you or not at any time receive any interest on said bonds, or did you transfer the interest coupons for the payment of interest on said bonds March 1st, 1869, or any of them; and, if so, to whom?

747 Int. 2nd. Did you or not, at any time, transfer any of said Morgan County bonds to any person or corporation; and, if so, what person or corporation & who?

In consideration whereof and because your orator is remediless in the premises and can only have full relief in a court of equity, your orator prays that process of summons may issue against the said Peoria, Pekin and Jacksonville Railroad Company, commanding said defendant to appear at the next term of this court, then and there to answer touching all and singular the allegations of this bill; and upon a final hearing that said defendant be required to deliver up to be cancelled the 40 bonds of the county of Morgan, amounting to twenty thousand dollars, delivered to the Peoria, Pekin & Jacksonville Railroad Company as aforesaid, with interest coupons from 1st of March, 1868; and that this court will render such other and further relief as the nature of your orator's case shall require according to equity & good conscience, and your orator will ever pray, &c.

H. E. DUMMER &
J. T. SPRINGER,
Sol's for Comp.

748 And afterwards, to wit, on the 16th day of September, A. D. 1870, a certain amended bill in chancery was filed with the clerk of our said court, in the case of the County of Morgan vs. The Peoria, Pekin & Jacksonville Railroad Company, which amended bill is in the words & figures following, to wit:

Of the November term, A. D. 1870, of the Morgan County circuit court.

STATE OF ILLINOIS,
Morgan County:

THE COUNTY OF MORGAN
vs.
THE PEORIA, PEKIN & JACKSONVILLE RAILroad Company and Isaac L. Morrison. } Bill in chancery.

Your complainant, the County of Morgan, hereby amending her original bill by leave of the court first had and obtained, avers on information derived from the answer of the Peoria, Pekin and Jacksonville Railroad Company, that of the said bonds of the county of Morgan, the bonds numbered from 81 to 100, inclusive, came to the hands of Isaac L. Morrison by some arrangement between the said Isaac L. Morrison and
749 the Peoria, Pekin & Jacksonville Railroad Company, and that the same are now claimed by the said Morrison as belonging to and now owned by him, and that in his hands they are valid and binding obligations against the said county of Morgan; and now your complainant prays that the said Isaac L. Morrison may be made a party defendant to the original bill of your complainant against the said Peoria, Pekin and Jacksonville Railroad Company, and that process of summons in chancery may be issued against the said Morrison; and now averring as against the said Isaac L. Morrison the allegations contained in said original bill, your complainant prays that the said Isaac L. Morrison be required to answer on oath touching all and singular the allegations contained in said original and amended bills, and especially that he answer the following interrogatories:

1. Have you the possession or control of any of said bonds of the county of Morgan, originally issued, as set forth in said original bill to the Illinois River Railroad Company, & do you claim to own said bonds or any of them; &, if so, what their numbers, and amounts?

2nd. If you claim to own any of said bonds, from whom did
750 you obtain them, and for what consideration; how said consideration, if any, was paid; if in money, what amount of money was paid for said bonds, & to whom, & when? & if not paid in money, state the mode and kind of payment.

3rd. If any of said bonds of Morgan County, originally issued to the Illinois River Railroad Company as aforesaid, came to your possession or control, and are now claimed by you as your property, by whom were they delivered to you, and were any of those claimed by you ever really and litterally in the possession and custody of any officer or agent or attorney of the Peoria, Pekin and Jacksonville Railroad Company? &, if so, state the name of such officer, agent, or attorney.

And your complainant prays the same relief as against the said Isaac L. Morrison, as to any of said Morgan County bonds, originally issued to the Illinois River Railroad Company as aforesaid, & in the possession, custody or control of the said Isaac L. Morrison, as your complainant has prayed touching same bonds in your complainant's original bill, as against the said Peoria, Pekin and Jacksonville Railroad Company.

THE COUNTY OF MORGAN.
SPRINGER & DUMMER,
Solicitors for Complainant.

751 And afterwards, to wit, the 20th of Feb'y, A. D. 1873, a certain amended bill in chancery was filed with the clerk of our said court, in the case of the County of Morgan vs. The Peoria, Pekin and Jacksonville Railroad Company, which amended bill is in the words and figures following, to wit:

Of the May term, A. D. 1873, of Morgan County circuit court.

STATE OF ILLINOIS,
Morgan County:

THE COUNTY OF MORGAN
vs.
THE PEORIA, PEKIN & JACKSONVILLE RAILroad Company and Isaac L. Morrison. } Bill in chancery.

To the Hon. Charles D. Hodges, judge of the first judicial circuit:

Your complainant, The County of Morgan, as an amendment to the original bill of complaint, by leave of the court, respectfully shows unto the court that William Thomas claims to be an equitable assignee of the bonds in controversy in this suit, to the extent of four thou-
752 sand dollars, with interest coupons attached, by virtue of two orders originally drawn by the Illinois River Railroad Company, by its president, each of said orders being for two thousand dollars of said bonds, in favor of Messrs. Allen and McGrady, the parties originally contracting to build the Illinois River Railroad, & who had furnished work and materials towards the construction of said road, which orders were transferred to the said William Thomas & remain unliquidated.

And your complainant further shows unto the court, that Mahlon H. L. Schooley and Benjamin S. West each claims, as a creditor of the Illinois River Railroad Company, to have an interest in an equitable lien upon the said bonds in controversy, to the extent of their several claims, but complainant is not fully advised of the nature or amount of the claims of the said Schooly & West, nor whether the same are valid claims against the said Illinois River Railroad Company, or if valid against said company, whether said claimants by virtue of their claims have now any interest in or equitable lien upon the said bonds in controversy.

753 In consideration of which premises your complainant prays that a summons in chancery issue for the said William Thomas, Mahlon H. L. Schooly and Benjamin S. West, and that they be required to answer the allegations of complainant's bill and amended bill, yet not upon oath, answers on oath being waived, and upon a final hearing that the court will determine the rights of the said William Thomas, Mahlon H. L. Schooly and Benjamin S. West, as to the said bonds in controversy, and grant the specific and general relief as prayed by complainant in said original and amended bills, and your complainant, &c.

THE COUNTY OF MORGAN.
TH. SPRINGER,
H. E. DUMMER,
Solicitors for Compl't.

And afterwards, to wit, the 16th day of September, 1873, a certain amended bill in chancery was filed with the clerk of our said court, in

the case of the County of Morgan vs. Peoria, Pekin & Jacksonville Railroad Company, which amended bill is in the words and figures following, to wit:

754 *Amendment to bill.*

STATE OF ILLINOIS,
Morgan County:
COUNTY OF MORGAN
vs.
PEORIA, PEKIN AND JACKSONVILLE RAILROAD Company, Isaac L. Morrison, William Thomas, Mahlon H. L. Schooly, & Benjamin S. West.

Insert after the words "Morgan County," 20th line of 2nd page of original bill, the following, the original of which stipulation is in words and figures following, to wit:

STATE OF ILLINOIS,
County of Cass, ss:

I, R. S. Thomas, president of the Illinois River Railroad Company, certify that that portion of said railroad situated north of the town of Virginia, in said county, is now in process of construction, and that the portion of said road between Jacksonville and Virginia is under contract to be completed by the 1st day of December, 1858; and that it is provided in the contract for the construction of said road that the Morgan County bonds shall be expended for work done in Morgan County,
755 and not elsewhere.

Given under my hand this 7th September, A. D. 1857.

(Signed) R. S. THOMAS,
President I. R. R. R.

And the said complainant further avers that the said Illinois River Railroad Company was organised under an act of the general assembly of the State of Illinois, entitled "An act to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County," approved February 11th, 1853, and that said contract of subscription, as finally made by said stipulation, was made with said company with reference to the obligations and liabilities of said company, as required by the terms and provisions of the said original charter & the following amendatory acts, to wit:

An act entitled "An act to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County," approved March 1, 1854; an act entitled "An act to amend the charter of the Illinois River Railroad Company," approved January 29th, 1859; an act entitled "An act to amend an act entitled 'an to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County,'"
756 approved Feb'y 11th, 1853; and also to amend an act entitled "An act to amend an act entitled 'an act to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County,' approved March 1st, 1854," approved Feb'y 16th, 1857; all of which acts are hereby referred to and made part of this bill.

J. T. SPRINGER.
H. E. DUMMER,
Sol. for County of Morgan.

Has on this same day, to wit, on the 16th day of September, A. D. 1873, at the September special term, A. D. 1873, of the Morgan County circuit court, a certain decree was rendered and duly entered of record in the consolidated causes of the County of Morgan vs. Peoria, Pekin & Jacksonville Railroad Company et al., and William Thomas vs. Morgan County et al., which decree is in the words and figures following, to wit:

Pleas before the honorable the circuit court for the County of Morgan and State of Illinois, at a special chancery term of said court
757 held at the court-house in Jacksonville, in said county, commencing September 16th, A. D. 1873.

Present, the honorable Chancy L. Higbee, judge of the eleventh judicial circuit, presiding at the request of the hon. Cyrus Epler, judge of the eighteenth judicial circuit; William H. Broadwell, sheriff.

Attest:

JOE. W. CALDWELL, *Clerk.*

Of the special September term, A. D. 1873, of the Morgan County circuit court.

STATE OF ILLINOIS,
Morgan County:

COUNTY OF MORGAN
vs.
PEORIA, PEKIN AND JACKSONVILLE RAILroad Company, Isaac L. Morrison, Wm. Thomas, Mahlon H. L. Schooly, and Benjamin S. West.

And now on this day came the parties, and on motion of Morgan County leave is given to amend its original bill, which is accordingly done, and afterwards came the county of Morgan and filed its motion in writing to suppress portion of certain depositions, which motion is in words and figures following, to wit:

COUNTY OF MORGAN
vs.
PEORIA, PEKIN & JACKSONVILLE RAILROAD Company, Isaac L. Morrison, Wm. Thomas, Mahlon H. L. Schooly, and Benjamin S. West.

758 The complainant moves the court to suppress the following portions of the depositions filed by the defendants:

1st. Answer of H. G. Whitlock to interrogators 5 in-chief: 1st, because it does not contain any statement of a fact, but the feeling & opinions of the witness; 2nd, so far as it relates to the associate parties it has the additional objection that it is hearsay.

2nd. Answer of H. G. Whitlock to 15 interrogators in-chief: 1st, because the answer relates to the motives of the members of the county court; 2nd, it relates to the motives of the associate justices, and is liable to the additional objection that it is hearsay; 3, it is an attempt to prove by parol what can only be proved by the records, that is, the action of the county court.

3rd. The answer of H. G. Whitlock to the 20th interrogators-in-chief:

1, because it asks for the opinion of the witness; 2, it asks for the opinion of the witness when not acting officially; 3rd, so far as it asks for the opinion of the associate justices, it is liable to the additional objection that it is hearsay.

4th. The answer of H. G. Whitlock to the 29 interrogators-in-chief: 1, because it is a statement as to the contents of a written instru-
759 ment without accounting for the non production of the original instrument.

5. So much of the answers of H. G. Whitlock to interrogatories 19, 27, & 28 as relates to the declarations of the Morgan Co. court when not acting officially, 1. Because such evidence is not competent.

6. So much of the answers of H. G. Whitlock to interrogatories 21 & 22 as consist of parol evidence of what the county court did; that is, the order of the court. 1. Because such orders can only be shown by the record.

7. The answer of Isaac L. Morrison to interrogatory 13 in chief. 1. Because it is not legally competent to prove motions of members of the co. court. 2. The action of the co. court can only be shown by the record. 3. It is hearsay so far as relates to the expression of opinion by the members of the co. court. 4. Declarations of members of the co. court when not acting officially not competent evidence.

8. The answer of J. L. Morrison to interrogatory so far as it states the declarations of members of the county court when not acting officially, because such declarations are not competent evidence.

760 9. The answer of J. L. Morrison to interrogatory 16th, so far as relates to what was done by the co court, which can only be shown by the record. And also to so much of said answer as states the declarations of members of the county court, because such evidence is not competent or admissible.

10. The answer of J. L. Morrison to interrogatories 17, 18 & 19 in chief, because an attempt to prove by parol what can only be shown by the record.

And thereupon the court not having examined said exceptions, enquired of the solicitors of the parties interested if any of said exceptions were of a formal character, which could be obviated by retaking the depositions, and on being answered in the negative, the court reserved its decision of said motion until the hearing.

WILLIAM THOMAS
vs.
MORGAN COUNTY & LUCIUS HOPKINS, ALEXander Studwell, & George T. Cobb, trustees,
W. H. L. Schooley, Benjamin S. West,
761 James Blair, Aaron Addis, George W. Dye, Henry Swift, S. Roney, Henry McKee, Benjamin Beesley, Harvey O'Neal, Henry T. Thomas, administrator of Richard S. S. Thomas, Isaac Vail, Benjamin H. Gratton, Richard P. Gratton, Arial Haines, Jonathan Haines, Lafayette Schaffer, Reuben Bergstresser, Francis Law, Henry E. Dummer, and the Peoria, Pekin & Jacksonville Railroad Company.

On this day came William Thomas, and dismissed his bill as to Lucius Hopkins, Alexander Studwell, and George T. Cobb.

COUNTY OF MORGAN
vs.
THE PEORIA, PEKIN & JACKSONVILLE RAILroad Company, Isaac L. Morrison, William Thomas, W. H. L. Schooley, and Benj. S. West. } Original bill in chancery.

WILLIAM THOMAS
vs.
MORGAN COUNTY & OTHERS. } Original bill in chancery.

MAHLON H. L. SCHOOLEY
vs.
MORGAN COUNTY & THE PEORIA, PEKIN & Jacksonville Railroad Company. } Cross bill.

762 BENJAMIN S. WEST
vs.
MORGAN COUNTY AND THE PEORIA, PEKIN & Jacksonville Railroad Company. } Cross-bill.

And now on this day came the parties in all the above entitled suits and filed their stipulation in relation to the trial of the above entitled cases, which stipulation is in words and figures following, to wit:

STATE OF ILLINOIS,
Morgan County, ss:

COUNTY OF MORGAN
vs.
PEORIA, P. & J. R. COMPANY ET AL. } In chancery.

WILLIAM THOMAS
vs.
COUNTY OF MORGAN ET AL. } In chancery.

It is ordered by consent that the case of William Thomas vs. The County of Morgan et al., be tried with the case of The County of Morgan vs. The Peoria, Pekin & Jacksonville Railroad Company, and also, 2nd, that the depositions taken in the case of The County of Mor-
763 gan against the Peoria, Pekin & Jacksonville R. R. Company may be read on the trial of the said cases as so tried.

The foregoing stipulations shall in no respect diminish the rights of said Thomas, but he shall have and may exercise all the rights of which he would be possessed if his case was tried separately. The foregoing stipulation extend to the cases of M. H. L. Schooly vs. Morgan County et al. and B. H. West vs. Morgan County et al. The foregoing stipulation shall in no respect diminish the rights of the Peoria, Pekin & Jacksonville Railroad Company, nor the rights of Isaac L. Morrison nor the county of Morgan, but each and both of said parties shall have and may exercise all the rights of which he would be possessed if the above cases were tried separately.

THE PEORIA, PEKIN AND JACKSONVILLE RAILROAD COMPANY.
ISAAC L. MORRISON.
By McCLURE & KIRBY,
Solicitors.

WM. THOMAS.
SPRINGER & DUMMER.

And therefore it is ordered by the court that said cases be consolidated and tried as one suit.

And afterwards these cases above entitled came on to be heard upon the pleadings and proofs following, to wit:

The original bill of Morgan County with amendments, and the exhibits referred to.

764 The answer of the Peoria, Pekin & Jacksonville Railroad Company.

The answer of Isaac L. Morrison.

The answer of William Thomas.

The answer of Benjamin S. West.

The cross bill of said West.

The answer of Mahlon H. L. Schooly.

The cross bill of said Schooly.

The answer of the Peoria, Pekin & Jacksonville Railroad Company to the cross bill of West.

The answer *to* said railroad company to the cross bill of said Schooly.

The answer of Morgan County to the cross bill of West.

The answer of Morgan County to the cross bill of Schooly.

The original bill of William Thomas vs. The County of Morgan and others, with the amendments and supplemental bill.

The answer of the Peoria, Pekin & Jacksonville Railroad Company to said bill.

The several answers of the County of Morgan, Henry E. Dummer, Benjamin S. West, Mahlon H. L. Schooly, Benjamin Beesly, Harvey O'Neal, Isaac Vail, B. H. Gratton, R. P. Gratton, Henry S. Thomas, Francis Law, Henry Swift, James Blair, George W. Dye, Stephen

765 Roney, A. D. Addis, Reuben Bergstresser, Lafayette Schaffer, Ansel Hains, Harry McKee.

The cross bill of Benjamin S. West and Mahlon H. L. Schooly, filed in the said last case.

The several answers of the County of Morgan, the Peoria, Pekin & Jacksonville Railroad Company, Henry E. Dummer, and Francis Low to the cros' bill of said Schooly and West, respectively.

The replications to all the above mentioned answers.

The bill, amended bill, answers, replications, exhibits, and all pleadings, and papers, and proofs on file in the case in chancery of James Blair and others vs. The County of Morgan and others, and also the decree rendered in said case at the November special term of Morgan County circuit court, 1867, and also the master's report in said case, and also the order of the court approving the report and entering satisfaction of decree.

The transcripts of the judgments of the following parties against the Illinois River Railroad Company, admitted to be the same demands mentioned in the pleadings, decree, &c., in the above case of James Blair and others vs. Morgan County and others, to wit, James

766 Blair, Aaron Addis, George W. Dye, Henry Swift, Stephen Roney, Harvey O'Neal, Benjamin Gratton, Richard P. Gratton, Isaac Vail, Benj. Gratton, Henry McKee, Benjamin Beesley, A. & J. Harris, L. Schaffer, Reuben Bergstresser, Francis Low, Henry S. Thomas, administrator of Richard S. Thomas.

Depositions of Francis Low, Benjamin Beesly, Isaac Vail, Benjamin S. Prettyman, Reuben Bergstresser, all admitted to have reference to the same demands in the above mentioned judgments.

The testimony of William Thomas, Henry E. Dummer, Cyrus Epler,

John Allen, and James Epler, and William S. Hook, taken in open court, and reduced to writing, and certified by the judge.

The admission by the parties, upon the hearing, that the city of Jacksonville voted and subscribed $50,000.00 in bonds for stock to the P. P. & J. R. R. Co., to be paid bonds on completion of the railroad to Jacksonville.

Depositions of Stephen Dunlap, John Hardin, John Trabue, with order of county court of March 6th, 1869.

The answer of Morgan County, filed July 31, 1863, to the bill in chancery of Elliott & Brown in the circuit court of said county against
767 The County of Morgan, the Illinois River Railroad Company and others, interpleader.

The certified copies of the orders of the county court of said county, marked Exhibit 1, and filed in above case July 31, 1863.

The cross bill of the County of Morgan against Richard S. Thomas and others, filed in the circuit court of said county, in chancery, June 1, 1864.

The decree of the court at the September term, 1863, in the above case of Elliott & Brown vs. Morgan County and others.

The decree of the circuit court of Morgan County in the case in chancery of Richard S. Thomas vs. The County of Morgan and others, rendered September term, 1865; also the final decree and orders of said court afterwards made in same case.

The orders of Morgan County court, directing payment of judgment of Ladd and Vail mentioned in the for'going decrees, and showing cancellation of county bonds in making such payment.

The certificate of Richard S. Thomas, certifying to the county court of Morgan County that the Illinois River Railroad Company had let the contract to build the railroad, and the county bonds were only to be paid out for work done in Morgan County.

768 The transcript of the judgment of the supreme court in the above case.

The testimony of James Berdan and Isaac R. Bennett, taken in the above case of Richard S. Thomas vs. Morgan County & others, and filed May 24, 1865.

The deposition of Edward R. Elliott and appended statement of William Brown, in writing, taken in above case, before Henry Styker, N. P., June 22, 1865.

The following statutes of Illinois, entitled as follows:

"An act to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County," approved Feb'y 11, 1853. (Private Laws of 1853, page 53.)

"An act to amend an act entitled 'An act to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County,'" approved March 1, 1854. (Public Statutes of 1854, page 207.)

"An act to amend the charter of the Illinois River Railroad Company," approved January 29th, 1857. (Private Laws of 1857, page 105.)

"An act to amend an act entitled 'An act to construct a railroad from Jacksonville, in Morgan County, to L' Salle, in La Salle
769 County,'" approved February 11, 1853, and also to amend an act entitled "An act to amend an act entitled 'An act to construct a railroad from Jacksonville, in Morgan County, to La Salle, in La Salle County,'" approved March 1, 1854. (Private Laws of 1857, page 838.)

"An act to further amend the charter of the Illinois River Railroad Company," approved February 14, 1859. (Private laws of 1859, page 457.)

"An act to incorporate the Peoria, Pekin and Jacksonville Railroad Company," approved June 11, 1863. (Private acts of 1863, page 234.)

"An act supplemental to an act entitled "An act to incorporate the Peoria, Pekin and Jacksonville Railroad Company," approved February 16, 1865. (Private laws of 1865, vol. 2, page 203.)

"An act to amend the charter of the Peoria, Pekin and Jacksonville Railroad Company, approved Feb'y 19, 1867. (Private laws of 1867, vol. 2nd, page 707.)

"An act to amend the several acts incorporating the Peoria, Pekin and Jacksonville Railroad Company," approved March 10, 1869. (Private laws of 1869, vol. 3, page 335.)

"An act to incorporate the Sangamon Valley Railroad Com-
770 pany," approved Feb'y 16, 1865. (Private laws of 1865, vol. 2, page 214.)

"An act to incorporate the Arenzville, Virginia and Bloomington Railroad Company," approved March 7, 1867. (Private laws of 1867, vol. 1, page 976.)

"An act to amend the charter of the St. Louis, Alton and Rock Island Railroad Company," approved Feb'y 23, 1867. (Private laws of 1867, vol. 2, page 709.)

(The three foregoing acts objected to by counsel for Morgan County; objection overruled; counsel except.)

Stipulation to admit as evidence the record of deed of trust or mortgage from Illinois River Railroad Company to Studwell, Hopkins and Cobb, trustees for bondholders of said railroad company; also of the master's deeds to Arnold, Allen and Trowbridge, on the foreclosure of said trust deed; also of the deed from said Arnold, Allen and Trowbridge to the Peoria, Pekin and Jacksonville Railroad Company.

The record of said deed of trust or mortgage in book N of mortgages, in recorder's office, Morgan County, commencing page 65.

771 The record of said deed of the master in chancery on foreclosure of the deed of trust to Allen, Arnold and Trowbridge, purchasers at the sale, in Book Y Y of deeds in said recorder's office, commencing on page 615.

The record of said deed from Arnold, Allen and Trowbridge to the Peoria, Pekin and Jacksonville Railroad Company in said Book Y Y of deeds, commencing on page 621.

Certified copy of the record and proceedings of and in the circuit court of the United States for the southern district of Illinois, on the foreclosure and sale under decree of the court of the aforesaid trust or mortgage deed, and the property therein described; also a copy of the judgment rendered by said court for balance due after said sale.

Copy of the proceedings and resolutions of the Illinois River Railroad Company, on the 12th day of July, 1862, with certificate of the secretary, filed May 24, 1865, in the case of Richard S. Thomas vs. the County of Morgan and others in this court above mentioned.

Copy of the order of Ill. R. R. Co. allowing claim of R. S. Thomas, certified by Schooly, secretary.

772 The deposition of Isaac L. Morrison and exhibits therein mentioned.

The deposition of Herbert G. Whitlock and exhibits therein mentioned.

The original receipt or written instrument given by Isaac L. Morrison in the county court of Morgan County for the $20,000.00, in county bonds referred to by said Morrison in his deposition.

(The genuineness of this instrument and also that it was given as tes-

tified was admitted, but counsel for Morgan County objected to its competency. The court overruled the objection, and counsel excepted.)

Testimony of H. B. McClure, taken in open court and certified by the judge.

The answer of William Thomas, filed in the above case of Richard S. Thomas vs. The County of Morgan and others, September 1, 1864.

The orders of the Illinois River Railroad Company in favor of Allen G. McGrady, for $4,000.00 in county bonds, assigned to William Thomas.

The orders of the Illinois River Railroad Company in favor of Mahlon H. Schooly.

The note of the president of said company to Benjamin S. West.

773 Depositions of M. H. Schooly; James M. Ruggles. The testimony, in open court, of William Thomas, John Allen, certified by the judge; two letters of Lucius Hopkins to William Thomas.

(Letters objected to by the counsel of the P. P. & J. R. R. Co., Isaac L. Morrison and Morgan County, *is* incompetent and inadmissable evidence: objection overruled and parties except.

The stipulation of Lucius Hopkins and Alexander Studwell, objected by the counsel for Peoria, Pekin and Jacksonville Railroad Company, and by counsel for Morgan County and by Isaac L. Morrison, as incompetent and inadmissable evidence; objection overruled; counsel except.)

The oral evidence certified by the court.

The admission that the copies of notes and due bills set out in the transcript of records in the cases of Blair vs. Ill. R. R. Road Co.; Addis vs. Ill. R. R. Co.; Dye vs. Ill. R. R. Co.; McKee vs. Ill. R. R. Co., and Hains et al vs. Ill. R. R. Co., are true copies of the original notes sued on in said cases, to have the same force and effect as the original notes and due bills.

And the court being fully advised of and concerning the premises, it is considered and adjudged by the court:

774 1st. That the bonds of Morgan County originally issued to the Illinois River Railroad Company, dated the 10th September, 1857, for five hundred dollars each, numbered from 61 to 80 inclusive, amounting to ten thousand dollars, heretofore delivered to the Peoria, Pekin & Jacksonville Railroad Company, together with the interest coupons thereto belonging, maturing on the 1st of March, 1870, and thereafter, be restored to the custody *to* the county of Morgan, by the delivery of the same to the clerk of the Morgan County court, by said Peoria, Pekin and Jacksonville Railroad Company, on or before the 1st day of November, 1873.

2nd. That the bonds of Morgan County originally issued to the Illinois River Railroad Compa'y, dated the 10th day of September, 1857, for five hundred dollars, each numbered from 83 to 100 inclusive, amounting to nine thousand dollars, heretofore delivered to the Peoria, Pekin & Jacksonville Railroad Company, and by said company transferred to Isaac L. Morrison & now in the possession of the said Morrison, be restored, together with the interest coupons thereto belonging, maturing on the 1st day of March, 1870; and thereafter to the custody of

775 the county of Morgan, by the delivery of the same to the clerk of the Morgan County court, on or before the 1st day of November, A. D. 1873.

3rd. That the said bonds when restored to the custody of the county of Morgan shall be held, except so far as the same are disposed of by this decree, as the same were held previous to their delivery to the said Peoria, Pekin and Jacksonville Railroad Company.

4th. That the bonds so restored to the custody of the said county of Morgan, the said county of Morgan shall, within ten days after acquiring possession thereof, delivered to William Thomas, in discharge of his claim as assignee of Allen and McGrady, eight of said bonds with interest coupons thereto belonging from March, 1860.

5th. That if the county of Morgan shall not be able to deliver to said William Thomas coupons as above directed by reason of their cancellation or otherwise, then, in lieu of said coupons not delivered, the county shall pay on the delivery of said eight bonds the equivelent value at par in money.

6th. That Mahlon H. L. Schooly as adjudged to have a claim
776 against the Illinois River Railroad Company, to the amount of one thousand and twelve dollars and eighty-four cents; and the said Benjamin S. West is adjudged to have a claim against the Illinois River Railroad Company to the amount of one hundred and sixty-three dollars & sixty-four cents; that the said bonds of Morgan County not disposed of by this decree are assets applicable to the payment of said claims of Schooly & West; that of said bonds so to be restored to the custody of Morgan County, and not otherwise disposed of by this decree, the county of Morgan shall deliver to the master in chancery of Morgan County within ten days after acquiring possession of the same, so many of said bonds, with coupons attached, as will produce a sum sufficient to pay the claims of the said Schooly and West, and the costs of their cross bills; and that the said master in chancery sell said bonds so delivered to him with coupons attached at public sale for cash, and apply the proceeds of sale to the payment of the claims of said Schooly and West, with six per cent. interest from the date of this decree, and costs of sale, and costs of cross-bill adjudged as aforesaid, the said master having first given twenty days' notice of the time, place and
777 terms of sale by publication in some newspaper published in Jacksonville, Illinois.

7th. That the Peoria, Pekin & Jacksonville Railroad Company, and Isaac L. Morrison, pay the costs of the said suit of the county of Morgan against the Peoria, Pekin & Jacksonville Railroad Company & others.

8th. That the county of Morgan pay the costs of the suit of William Thomas against the county of Morgan and others, and the costs of the cross-bill of Schooly and West.

9th. That the master in chancery report his actings and doings in the premises to this court.

10th. And thereupon each of the parties to the above entitled suits consolidated as aforesaid prayed an appeal to the supreme court of Illinois, which is allowed by the court to all and each, or any number of said complainants and defendants in said suits so consolidated, upon the condition that any party or parties appealing shall file on or before the 1st day of November, A. D. 1873, an appeal bonds in the penal sum of five hundred dollars, with good and sufficient security conditioned as required by law in cases of appeals from the circuit
778 to the supreme court, in the office of the clerk of the Morgan County circuit court, the security to be approved by said clerk.

C. L. HIGBEE.

STATE OF ILLINOIS.
Morgan County, ss:

I, Joseph W. Caldwell, clerk of the circuit court within and for the county of Morgan, in the State aforesaid, do hereby certify that the

above and foregoing thirty-six (36) pages contain a full, true and complete copy of certain papers entitled—

1st. The bill in chancery in the case of The County of Morgan vs. The Peoria, Pekin and Jacksonville Railroad Company.

2nd. Amendment to original bill in same case.

3rd. Amendment to original bill.

4th. Amendment to original bill.

And also the decree rendered in same case, as fully and completely as the same appears from the records and files of my said office.

In testimony whereof, I have hereunto set my hand and seal this day of September, A. D. 1876.

JOSEPH W. CALDWELL,
Clerk of the Circuit Court of Morgan County.

Fee bill, $10.80.

(Indorsed:) Exhibit 8; Henry Stryker, jr., special commissioner.

(Also indorsed:) Filed Sept. 14, 1876. J. A. Jones, clerk.

779 EXHIBIT No. 9.

Opinion of the court by Mr. Justice Schofield.

MORGAN COUNTY ET AL.
vs.
THOMAS ET AL.

This is the third time this court has been called upon to determine questions affecting the claim of William Thomas to a portion of the lands (bonds) involved in this controversy.

In the first case, Thomas et al. vs. The County of Morgan, 39 Ill. 496, it was in evidence as it is now that the question whether Morgan County should subscribe for $50,000 of the capital stock of the Illinois River Railroad Company, payable in the bonds of the county, was submitted to the voters of that county at an election held for that purpose on the first day of September, 1856; that a majority of the legal votes cast at such election was in favor of the subscription; that at the next ensuing December term of the county court an order was made and entered of record directing the subscription to be made; that the general assembly

780 by an act to amend the charter of the Illinois River Railroad Company, approved January 29th, 1857, legalized the election and directed the subscription to be made and the bonds to be issued therefor; that soon after the passage of this act the subscription was made and the county court, by an order absolute in its terms, subsequently and at its September term, directed that the bonds be issued and delivered to the Illinois River Railroad Company. But it was then assumed that William Thomas was a director of the Illinois River Railroad Company at the time the bonds were placed in the hands of Elliott & Brown, whereas it now appears that he was not then nor for several months afterwards such director.

In the next case, Thomas vs. The County of Morgan et al. (59th Ill. 479), the question presented grew out of the action of the court below in sustaining a demurrer to complainant's bill, and the allegations of the bill were necessarily assumed to be true.

Two important modifications of facts upon which considerable stress was then laid in the opinion as published are made by the present record.

1st. The court was then required to assume that the Peoria,

781 Pekin and Jacksonville Railroad Company was the successor of

the Illinois River Railroad Company, in the sense that the new company was but a reorganization of the old one professing the same property rights and burdened with the same obligations and duties, both public and private.

2d. That the Peoria, Pekin & Jacksonville Railroad Company was making no claims for itself to the bonds in controversy.

By the case now presented, The Peoria, Pekin, & Jacksonville Railroad Company is a totally distinct and independent corporation from the Illinois River Railroad Company, and claims that $20,000 of the bonds, all that have not been cancelled by the company, were delivered to it by the county in consideration that it constructed the said railroad which the Illinois River Railroad Company failed to construct between Virginia and Jacksonville; that it thereby became the lawfu lowner of said bonds free from any claims of the creditors of the Illinois River Railroad Company; that it has since transferred $10,000 in nominal amount of them to Isaac L. Morrison, who has since transferred 1,000 of them to innocent parties and is claiming still to own the residue,
782 and that it still remains for itself the other $10,000 in nominal amount of the bonds and insists that it' rights thereto cannot be questioned.

The difference in the facts thus presented from what they formerly (3) to the court to be has made it necessary to re-examine with some care the grounds of the previous decisions alluded to, and having done so we have come to the conclusion that the claim of William Thomas should be sustained, not for the reason that the supposed condition upon which the bonds were placed in the custody of Elliott & Brown was performed, but because no such condition so far as the stockholders and creditors of the Illinois River Railroad Company, including Mr. Thomas, were concerned, ever existed.

The subscription which the county court was authorized to make for capital stock in the Illinois River Railroad Company by the vote of the people and the subsequent enactment of the legislature was not conditioned but absolute, and the subscription made pursuant to this authority was unconditional; it was made prior to issue of bonds, and when made, the contract between the county on the one side and the railroad company on the other was complete. The county was then legally bound to issue and deliver its bonds to the company in conformity
783 with the terms of its subscription, and its doing so, the company was bound to deliver to the county the requisite certificate showing that it was the owner of the number of shares subscribed for in its capital stock.

This claim for unpaid subscription then became a part of the assets of the company; creditors might rely upon it for payment of their debts as implicitly as upon any other assets of the company, and this, too, although the company, subsequently to the making of the subscription, may have abandoned all proceedings under its charter on account of its insolvency, (Henry vs. The Vermillion and Ashland Railroad Company, 17 Ohio, 187; Thuis vs. B. M. T & Co., 11 Ohio, 273; 1st Redfield on Railways, 3d edition, 170,) or the company might have sold and assigned it to a purchaser in good faith, and a court of equity would have protected the assignee in his purchase and enforced for his benefit payment of the subscription (Morris, adm'r, et al. vs. Cheney, 51st Ill., 451.) And upon this principal it was said correctly, as we think, in Thomas vs. The County of Morgan et al. (supra), that the two orders to Allen & McGrady, subsequently assigned to Thomas, operated as an equitable transfer

784 of so much of the county subscription from the railroad company to Thomas.

The fact that the railroad company was honestly indebted to Allen & McGrady at the time the orders were delivered to them, that they were in good faith delivered and received as a payment of so much indebtedness, and that the purchase of Thomas was free from objection is not questioned. Whether the county bonds had been absolutely delivered to Elliott & Brown for the company before the orders were drawn or not, we do not conceive it of any consequence; they were supposed to have been, and for that reason the orders were addressed to them. But the object in giving the orders was not to invest Allen & McGrady with the title to any particular bonds; it was simply to give them the right to have bonds of the county to that amount, thus paying that much of the company's indebtedness by transferring to them a like amount of indebtedness from the county. The orders were conclusive on the company, whether the bonds were delivered on presentation of the orders or not; and they were notice to the county of the holder's rights, if brought to the knowledge of its proper officers before the delivery
785 of the bonds in payment of its subscription.

The company could not, after delivering the orders, make claim to this portion of the county's indebtedness. Nor could the county, after notice of their delivery before payment of its subscription, disregard the claim. If, therefore, bonds have been delivered to the railroad company the debt of the county has been paid, and Thomas is entitled to have the bonds called for by the orders. If they have not been delivered, and the county was not released by the obligation to deliver them by the railroad company prior to receiving notice of the orders, the county still owes at least so much of the debt, unless Thomas is, by some act of Allen & McGrady or of himself, estopped from resorting to the county for payment, and he is entitled to have had the proper bonds issued and delivered to him.

It appears that Allen & McGrady had entered into a contract with the railroad company for the construction of the road, and that it was provided in that contract that the bonds of Morgan County should be applied to payment for work done in that county alone. No work was done in the county, and the contract was abandoned by Allen & McGrady without the fault of the company. Subsequently, on a final settlement between Allen & McGrady and the railroad company,
786 it was found to be indebted to them for work done elsewhere, and the orders held by Thomas were given to them by the company in payment of such indebtedness. Had the contract not been abandoned, Allen & McGrady could not, in attempting to enforce it, have insisted that the Morgan County bonds should be otherwise applied than as provided by the contract. But when the contract was abandoned, and the company acknowledged an indebtedness to them which was honestly due, they were then certainly entitled to look for its payment to any assets of the company which were available for the payment of its debts generally. The subscription being absolute in its forms, and therefore constituting a part of the assets of the company, R. O. Thomas had no authority, simply as president of the company, to consent that it should become conditional, nor could the county make such claim as a matter of right, as was held in Thomas et al. vs. Morgan County (supra). R. S. Thomas might, however, bind himself to treat the subscription as conditional, and so might other creditors, or the stockholders of the company, but there is no evidence that
787 Allen & McGrady, or William Thomas, were either parties or

privies to any arrangement made between R. S. Thomas and Morgan County with regard to the delivery of the bonds due from the county. When the contract between Allen & McGrady and the railroad company was made, no bonds had been issued, and the county stood bound by the terms of its subscription to deliver them to the company without any conditions.

It would, in our opinion, be *be* going too far to say because Allen & McGrady made a contract with the railroad company to receive from it Morgan County bonds for payment of work to be done in Morgan County alone, they must also be held to have agreed that the subscription of Morgan County was changed from an absolute to a conditional one. They had no contract with Morgan County, and had nothing to do in reference to its obligations to the company. They only had to look to the company for the bonds when their work was done in conformity with the contract, and could not have had, so far as we can perceive, the slightest motive to consent that the character of
788 the county subscrip ion should be changed; nor can we perceive how any act of theirs in making a contract with the railroad company could have so far pred judiced the county as to work an estoppel in favor of it and against them. With regard to the subscription, the county's obligations were fixed and known. The company was entitled to have the bonds, and whether it made conditional or absolute contracts, or absolute contracts on the faith of them, was a matter to be solely determined by it, and in which the county had no other concern than any other stockholder.

It cannot be questioned that it was competent for the company under proper circumstances to consent that Allen & McGrady should abandon their contract and acknowledge any indebtedness that was justly due them. The debtor, merely as such, can have no special interest in the question whether the creditor shall permit others with whom he contracts to abandon their contracts and become general creditors or not, for this cannot possibly affect his debt. These orders were issued to Allen & McGrady as creditors of the Illinois River Railroad Company just as they might have been to any other creditor, and we fail discover
789 sufficient evidence any contract or any act of estoppel on their part which Morgan County is entitled to interpose as a reason why they should not, in common with other creditors, have recourse on its bonds as assets of the company. So far as the acts of William Thomas have been shown it appears that he was not a director in the company when the bonds were issued, and had no connection with or knowledge of the circumstances attending their delivery.

Passing from this branch of the question it becomes necessary to inquire whether the evidence shows that the bonds were actually delivered to the company or not. The preponderance, in our opinion, is clearly that they were. The bonds were ordered to be delivered by the county board at its September term, 1857, and it appears by the preamble preceding the order, as entered of record, that R. S. Thomas had certified to the court that the contract for the construction of the road provided that the bonds of Morgan County were to be paid out for work done in that county, and not elsewhere, but the order itself is unqualified by any conditions. The record, after referring to the law
790 authorizing the court to issue the bonds and directing the delivery of certain bonds to other railroad companies, is as follows:

"And whereas the Illinois River Railroad Company has actually undertaken and is now proceeding with the construction of so much of said last-mentioned railroad as extends from Pekin, in Tazewell County, to Virginia, in Cass County, and R. S. Thomas having certified to this

court that the last-mentioned company have placed their said railroad under contract to be completed by the first day of December, 1858, from Virginia, in Cass County, to Jacksonville, and that it is provided in the contract for the construction thereof that the Morgan County bonds shall be expended for work done in Morgan County, and not elsewhere; and this court being satisfied that the interest and advantage of the county will be promoted by the delivery to the last-mentioned company, as hereinafter provided, of the bonds heretofore subscribed by the county to the capital stock of said company, it is therefore ordered that there be delivered to the Illinois River Railroad Company the amount of $50,000 in bonds of this county of this date," &c.

791 Subsequently to the making of this order and the issue of the bonds the county voted as a stockholder in the election of directors for the said railroad company, and for two years it paid the interest on the bonds. Opposed to the presumptions created by this evidence is only the recollections of the county judge and one of his associates to the effect that the bonds were delivered conditionally, and this is fully balanced by the contrary recollection of Elliott & Brown.

It is scarcely reasonable to suppose that if the bonds had not intended to be delivered until and as the work on the road progressed in the county, the record could have been silent in this respect; and it is still less reasonable to suppose that if conditions precedent to the delivery of the bonds had been agreed upon there would not also have been some definite way prescribed by which it was to be determined when those conditions were to be performed. How much and what kind of work was to be done before any bonds were to be delivered? Who was to determine when the requisite amount and quality of the work

792 was done? If there was a condition precedent to the delivery of the bonds to be performed as claimed, these were important questions, and yet the record contains no evidence by which they are answered; that it was expected and believed, and even intended, when the bonds were issued that they were to be paid out on work to be done in Morgan County, and not elsewhere, is abundantly proved. But this was to be done by the said railroad company when the bonds were rightfully due, and not by the county. Where a party receives property from another in discharge of a precedent liability, and the party delivering the property has no legal right to prescribe its future disposition or use, as in the present instance, the mere fact that when he delivered it he expects and intends that it shall be applied to a particular disposition or use does not make such an application of it a condition precedent to the vesting of title.

What has been said with regard to the claim of Thomas will apply with equal force to that of Schooley, and no objections have been urged against the claim of Weston.

793 The views we have expressed in regard to the claims against the county leaves but little to be added on the question between the county and the Peoria, Pekin & Jacksonville Railroad Company and Isaac L. Morrison. The trustees under the deed of trust from the Illinois River Railroad Company and Allen Arnold & Trowbridge, described in the act of incorporation as holders of bonds or obligations secured by the deed of trust, and their associates who should thereafter become purchasers at the sale under the deed of trust, were incorporated as the Peoria, Pekin & Jacksonville Railroad Company and empowered to purchase and own the franchise and property of the Illinois River Railroad Company, and upon said purchase and ownership to be invested with all the incorporate powers, privileges, rights, immunities,

&c., theretofore given or granted to the Illinois River Railroad Company.

Until the title of the Illinois River Railroad Company was legally divested, the Peoria, Pekin & Jacksonville Railroad Company owned no franchise or railroad, and of course had no authority to exercise
794 the incidents, immunities, privileges and powers connected with such ownership. Deriving its title under the sales, it took what it purchased subject to no liens or claims save such, if any, as were paramount to the deed of trust under which sale was made. The act of incorporation imposed no conditions subject to which the purchase under the deed of trust was to be made and the consequent rights and privileges enjoyed. It neither provided that the stockholders in the Illinois River Railroad Company should be stockholders in the Peoria, Pekin and Jacksonville Railroad Company nor that the latter company be liable for the payment of debts due from the former. The franchises granted *was* upon a new and valuable consideration, moving from parties other than those who composed the Illinois River Railroad Company. The effect of the act was simply to create a legal entity capable in law of purchasing, owning, and using that which was conveyed by the deed of trust.

Both upon principle and authority, therefore, the Peoria, Pekin & Jacksonville Railroad Company was not a reorganization of the
795 Illinois River Railroad Company, but a new and totally independent corporation. (Bouffet et al. vs. The G. W. R. Co., 25 Ills., 353; Villa vs. Milwaukee & Prarie du Chien R. R. Co., 17 Wisconsin, 497; Smith vs. Chicago & Northwestern Railway Co., 18 id., 17; Commonwealth vs. Passenger Railway Co., 52 Pa. (st.), 506; S. & S. E. R. R. Co. vs. Bakehill Tp., Sept. term, 1874.)

The Peoria, Pekin & Jacksonville Railroad Company acquired no claim to the Morgan County bonds at the sale under the deed of trust because they were neither expressly nor by necessary implication included within its terms, and it is for that reason unnecessary to enquire whether they were turned over to the trustees or whether the trustees renounced all claim to them; their powers and duties were measured by the deed and could not have been otherwise enlarged. The language of the charter of the Illinois River Railroad Company undoubtedly comprehended enough to have enabled it to include the bonds in the deed, but it was not compelled to do so, and it was not done. The
796 bonds then remaining as assets of the Illinois River Railroad Company could not have been donated by the county to the Peoria, Pekin and Jacksonville Railroad Company, nor was it competent for the legislature by enactment to make such donation. (1 Redfield on Railways, 3d edition, 168–9.) They were a trust fund to be held for the payment of the debts of the company to which they belonged, and this even if the failure of the corporation to exercise its corporate powers worked *had worked* its dissolution. (James vs. Woodruff et al., 2 Paige, 541; since again reported in 2 Danio, 594; Angell & Ames on Corp., (5 ed.) 779–a; 1st Redfield on Railways, ubi supra.)

But it is said in this view of the case the decree is erroneous, for the county is not interested as to who may be in possession of the bonds. We think differently; as a stockholder in the Illinois River Railroad Company the county is interested in the preservation of its assets and their appropriation to the payment of its debts. It is moreover interested in having its bonds restored to the custody whence they
797 were improperly removed, that its obligations to others having claims upon them may be discharged.

Perceiving no error in the decree of the court below, it is affirmed. Affirmed.

(Indorsed:) Morgan County vs. Thomas et al. No. 9. Exhibit 9. Henry Stryker, jr., special commissioner.

(Also indorsed:) Filed Sep. 14, 1876. J. A. Jones, cl'k.

798 EXHIBIT 10.

No. 701.] UNITED STATES OF AMERICA. [$1,000.

STATE OF ILLINOIS.

Illinois River Railroad Company. Incorporated February 11th, A. D. 1853.

First-mortgage bond.

Secured by the entire net earnings of the railroad as a sinking fund.

Know all men by these presents that the Illinois River Railroad Company, a body corporate created by and domiciled in the State of Illinois, hereby acknowledges itself indebted and bound to George T. M. Davis, or bearer, in the sum of one thousand dollars, lawful money of the United States of America, which sum the Illinois River Railroad Company hereby promises to pay at the Importers and Traders' Bank, in the city of New York, to the said George T. M. Davis, or bearer, on the first day of January, A. D. 1880, with interest from and after June 30th, 1859, at the rate of ten per centum per annum, payable semi-annually, at said Importers and Traders' Bank, in said city of New York, on the first days of January and July in each year after June 30th, 1859, on presentation and surrender of the annexed dividend or interest warrants.

799 This bond is one of a series of *of* seven hundred and twenty bonds, for one thousand dollars each, numbered from one to seven hundred and twenty, both inclusive, and of six hundred bonds, for five hundred dollars each, and numbered from seven hundred and twenty-one to thirteen hundred and twenty, both inclusive, and amounting in the aggregate to one million and twenty thousand dollars, and which have been made and executed by said Illinois River Railroad Company under express authority granted by several acts of the general assembly of the State of Illinois, and for the purposes authorized by and specified in said acts, and as security for the payment to the holders of said issue of said thirteen hundred and twenty bonds, with the interest to grow due thereon, the Illinois River Railroad Company has duly executed, acknowledged, and delivered, under the authority of said special acts and of resolutions unanimously passed and adopted by its board of directors, to Lucius Hopkins, George T. Cobb, and Alexander Studwell, as trustees, a mortgage or deed of trust, bearing even date herewith, and whereby all the real and personal property, rolling-stock, franchises, and effects now owned and acquired, or hereafter to be

800 *to be* owned and acquired by it, are mortgaged and conveyed to said trustees, and the survivors of them, as by reference to said mortgage or deed of trust or the record thereof will more fully appear, and to which and to all the terms and provisions thereof reference is hereby specially made.

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1877, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1876, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

806 Illinois River Railroad.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1876, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1875, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1875, for six months' interest on bond No. 701, for $1,000.

For and in behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

807 Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1874, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1874, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1873, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

808 Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1873, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1872, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders Bank of the city of New York, on the first day of January, 1872, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

809 Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1871, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1871, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1870, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. H. M. L. SCHOOLEY, *Sec'y.*

810 Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1870, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1869, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1869, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

811 Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1868, for six months' interest on bond No. 701, for 1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank in the city of New York, on the first day of January, 1868, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank in the city of New York, on the first day of July, 1867, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

812 Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1867, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1866, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1866, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

813 Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1865, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders Bank of the city of New York, on the first day of January, 1875, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1864, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

814 Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders Bank of the city of New York, on the first day of January, 1864, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1863, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1863, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

815 Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1862, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1862, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Baak of the city of New York, on the first day of July, 1861, for six months' interest on bond *bond* No 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

816 Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1861, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1860, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for fifty dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1860, for six months' interest on bond No. 701, for $1,000.

For and on behalf of the company,

$50. M. H. L. SCHOOLEY, *Sec'y.*

817 (Indorsed:)

Three hundred and seventy-seven dollars and six and three-fourth cents paid on the within bond by proceeds of foreclosure sale of October 1, 1863, under decree of the U. S. circuit court for the southern district of Illinois, in chancery, of June term, 1863, in suit of Studwell et al., trustees, vs. The Illinois River Railroad Company et al. The balance of principal & interest due on said bond is merged in a judgment for $1,067,292.56 entered in said court in said suit on the 24th June, 1864.

Dated July 6th, 1869.

A. STUDWELL,
LUCIUS HOPKINS,
GEORGE T. COBB,
Trustees.

(Also indorsed:) State of Illinois. Illinois River Railroad Company. Ten per cent. bond. No. 701. $1,000. Payable January 1st, A. D. 1880, with interest semi-annually on the first days of January and July, at the Importers' and Traders' Bank of the city of New York. Entire net revenues of the road irrevocably pledged as a sinking fund for the redemption of the bonds annually, by lot or otherwise, both principal and interest. No dividends to be made to stockholders until the whole issue of these first mortgage bonds are redeemed.

(Also indorsed:) Filed Sep. 14, 1876. J. A. Jones, cl'k.

(Also indorsed:) Exhibit 10. Henry Stryker, jr., special commissioner.

818 EXHIBIT 11.

No. 800.] UNITED STATES OF AMERICA. [$500.

STATE OF ILLINOIS.

Illinois River Railroad Company. Incorporated February 11th, A. D. 1853.

First mortgage bond.

Secured by the entire nett earnings of the railroad as a sinking fund.

Know all men by these presents, that the Illinois River Railroad Company, a body corporate, created by and domiciled in the State of Illinois, hereby acknowledges itself indebted and bound to George T. M. Davis, or bearer, in the sum of five hundred dollars, lawful money of the United States of America, which sum the Illinois River Railroad Company hereby promises to pay at the Importers' & Traders' Bank of the city of New York to the said George T. M. Davis or bearer, on the first day of January, A. D. 1880, with interest from and after June 30th, 1859, at the rate of ten per centum per annum, payable semi-annually at said Importers' & Traders' Bank in said city of New York, on the first days of January and July, in each year, after June 30th, 1859, on presentation and surrender of the annexed dividend or interest warrants.

819 This bond is one of a series of seven hundred and twenty bonds, for one thousand dollars each, numbered from one to seven hundred and twenty, both inclusive, and of six hundred bonds for five hundred dollars each, and numbered from seven hundred and twenty-one to thirteen hundred and twenty, both inclusive, and amounting in

the aggregate to one million and twenty thousand dollars, and which have been made and executed by said Illinois River Railroad Company under express authority granted by several acts of the general assembly of the State of Illinois, and for the purposes authorized by and specified in said acts and as security for the payment to the holders of said issue of said thirteen hundred and twenty bonds, with the interest to grow due thereon. The Illinois River Railroad Company has duly executed, acknowledged, and delivered, under the authority of said special acts and of resolutions unanimously passed and adopted by its board of directors, to Lucius Hopkins, George T. Cobb, and Alexander Studwell, as trustees, a mortgage or deed of trust, bearing even date herewith, and whereby all the real and personal property, rolling-stock, franchises, and effects now owned and acquired, or hereafter to be owned and
820 acquired by it, are mortgaged and conveyed to said trustees, and the survivors of them, as by reference to said mortgage or deed of trust or the record thereof will more fully appear, and to which and to all the terms and provisions thereof reference is hereby specially made.

And as a further security for the payment to the holders of said issue of said thirteen hundred and twenty bonds, with the interest thereon to grow due, the said Illinois River Railroad Company has, in the manner and upon the terms and conditions specified in said mortgage or deed of trust, irrevocably pledged the entire nett income of its railroad for the payment of the interest due or to grow due upon said bonds, and for the creation and maintenance of a sinking fund, to be applied to the payment and redemption of all said bonds, both principal and interest, in the mode and manner specified in said mortgage or deed of trust, and to which reference is hereby specially made as a part heoreof.

And it is expressly agreed by and between said Illinois River Railroad Company and the several holders of said thirteen hundred and twenty bonds, that the same are issued or negotiated, and are held and are to be held subject to redemption by lot or otherwise, out
821 of said *said* sinking fund at any time before January 1st, A. D. 1880, in the manner specified in said mortgage or deed of trust, and the same are made, executed, or issued, and held expressly subject to their payment and redemption before the maturity thereof out of said sinking fund.

And it is hereby expressly agreed by and between said Illinois River Railroad Company and the several holders of said thirteen hundred and twenty bonds, that in case said Illinois River Railroad Company shall for the space of thirty days make default in the payment of the semi-annual interest due, or to become due, or any or either of said bonds, or in case it shall fail to pay over to said sinking fund, as provided in said mortgage or deed of trust, the entire nett earnings of its railroad, then, and in either of said cases, after the lapse of said thirty days, the whole principal sum mentioned in each and all of said bonds shall immediately thereafter become due and payable, anything herein contained to the contrary thereof notwithstanding, and in case default shall be made, either in the payment of said semi-annual interest
822 as aforesaid, or in payment of said nett earnings to sinking fund as aforesaid, then, and in either of said cases, said trustees are bound and obligated by the very terms of said mortgage or deed of trust, after the lapse of thirty days as aforesaid, at the *the* request of two or more holders of said bonds, to foreclose said mortgage or deed of trust, and out of the proceeds of the sale of the mortgaged premises

to pay all said thirteen hundred and twenty bonds, both principal and interest.

In witness whereof the said Illinois River Railroad Company has caused this bond to be signed by its president and attested by its secretary, and its corporate seal to be hereunto affixed, at its office in the city of Pekin, in the county of Tazewell and State of Illinois, under the express authority of resolutions of its board of directors, this first day of November, in the year of our Lord one thousand eight hundred and fifty-eight.

R. S. THOMAS, *Pres't.*

M. H. L. SCHOOLEY, *Sec'y.*

This is to certify that the above bond is one of 1,320 bonds which are embraced in a mortgage or deed of trust, bearing even date herewith, made and executed by the Illinois River Railroad Company,
823 whereby all its real and personal property, rolling-stock, equipment, franchises, and effects, acquired and to be acquired, are mortgaged and conveyed to us as trustees as security for the payment of all said bonds, and which mortgage or deed of trust has been recorded in the several counties of the State of Illinois through which the railroad of said company runs, and constitutes and is the first lien upon the property therein described.

LUCIUS HOPKINS.
G. COBB.
A. STUDWELL.

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York, on the 1st day of January, 1880, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York, on the first day of July, 1879, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

824 Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York, on the first day of January, 1879, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars payable at the Importers & Traders' Bank of the city of New York, on the first day of July, 1878, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York, on the first day of January, 1878, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

825 Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1877, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1877, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1876, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

826 Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1876, for six months' interest due on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1875, for six months' interest due on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1875, for six months' interest due on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

827 Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1874, for six months' interest due on bond No. 800, for $500.

For and in behalf of the company,

$25 M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1874, for six months' interest due on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1873, for six months' interest due on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

828 Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1873, for six months' interest due on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1872, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1872, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

829 Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1871, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1871, for six months' interest on bond No. 800, for $500.

For and in behalf of the company.

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1870, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

830 Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York *for* the first day of January, 1870, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of July, 1869, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of January, 1869, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

831 Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of July, 1868, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of January, 1868, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of July, 1867, for interest on bond No. 800, for $500.

For and on behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

832 Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of January, 1867, for interest on bond No. 800 for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of July, 1866, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of January, 1866, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

833 Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of July, 1865, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of January, 1865, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of July, 1864, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

834 Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of January, 1864, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY.

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importers & Traders' Bank of the city of New York on the first day of July, 1863, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest warrant for twenty-five dollars, payable at the Importer' & Traders' Bank of the city of New York on the first day of January, 1863, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

835 Illinois River Railroad Company.

Interest warrant for twenty five dollars, payable at the Importers' & Traders' Bank of the city of New York on the first day of July, 1862, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest-warrant for twenty five dollars, payable at the Importers' & Traders' Bank of the city of New York on the first day of January, 1862, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest-warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York on the first day of July, 1861, for interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

836 Illinois River Railroad Company.

Interest-warrant for twenty five dollars, payable at the Importers' & Traders' Bank of the city of New York on the first day of January, 1861, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest-warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of July, 1860, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

Illinois River Railroad Company.

Interest-warrant for twenty-five dollars, payable at the Importers' & Traders' Bank of the city of New York, on the first day of January, 1860, for six months' interest on bond No. 800, for $500.

For and in behalf of the company,

$25. M. H. L. SCHOOLEY, *Sec'y.*

837 (Indorsed:)

Three hundred and seventy-seven dollars and six and three-fourths cents paid on the within bond, by proceeds of foreclosure sale of Oct. 7, 1863, under decree of the U. S. circuit court for the southern district of Illinois, in chancery of June term, 1863, in suit of Studwell et al., trustee, vs. The Illinois River Railroad Company et al. The balance of principal and interest due on said bond is merged in a judgment for $1,061,292 56, entered in said court in said suit on the 24th June, 1864.

Dated July 6th, 1869.

A. STUDWELL,
LUCIUS HOPKINS,
GEORGE T. COBB,
Trustees.

(Also indorsed:) State of Illinois. Illinois River Railroad Company, Ten per cent. Bond No. 800. $500. Payable January 1st, A. D. 1880. with interest semi-annually, on the first days of January and July, at the Importers' & Traders' Bank of the city of New York. Entire net revenues of the road irrevocably pledged as a sinking fund for the redemption of the bonds annually, by lot or otherwise, both prin-
838 cipal and interest. No dividends to be made to stockholders until the whole issue of these first-mortgage bonds are redeemed.

(Also indorsed:) Filed Sep. 14, 1876. J. A. Jones, clerk.

(Also indorsed:) Exhibit 11. Henry Stryker, jr., special commissioner.

839 And now, afterwards, to wit, on Monday, the 16th day of July, at the June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Decree.

JOHN ALLEN AND EDWIN L. TROWBRIDGE, survivors of Aaron Arnold, deceased,
v.
COUNTY OF MORGAN, PEORIA, PEKIN AND Jacksonville Railroad Company, Isaac L. Morrison, and Henry E. Dummer.
} In chancery.

This cause came on to be heard at this term upon the report filed herein by A. L. Knapp, special master, and the exceptions made thereto by the complainants and the County of Morgan; and the defendant, Isaac L. Morrison, having filed with the clerk of this court the eighteen bonds in his hands, with the coupons thereon, due March first, A. D. 1870, and thereafter to be delivered up to the said the County of Morgan; and it appearing that bonds Nos. eighty-one and eighty-two, each with the interest-warrants maturing March first, A. D. 1870, and thereafter, were in the hands of persons not parties to this suit
840 before this suit were commenced; and said exceptions were argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

First, that the bill be dismissed as to said defendants Isaac L. Morrison, the Peoria, Pekin and Jacksonville Railroad Company, and Henry E. Dummer, and as to said bonds eighty-one and eighty-two without prejudice.

Second, that said exceptions both on the part of the complainants and the said the County of Morgan be and the same are hereby overruled, and said master's report is hereby confirmed and approved.

Third, that the defendant, the County of Morgan, pay to the complainants within sixty days from this date the sum of seventy-two thousand five hundred and thirty-nine dollars and fifty-six cents ($72,539.56) with six per cent. interest per annum until paid.

Lastly, that the defendant, the County of Morgan, within sixty days from this date pay all the costs of this suit except said master's fee which is to be paid by the complainants, and which is fixed at two hundred and fifty dollars ($250.00).

On motion, an appeal is allowed to the County of Morgan upon its entering into bond to the complainants in the penalty of one hun-
841 dred thousand dollars conditioned as the law directs within sixty days from this date, the security to be approved by the clerk of this court.

And on motion of the complainants an appeal is allowed them upon their entering into bond to the County of Morgan in the penalty of one thousand dollars, conditioned as the law directs, within sixty days from this date, the security to be approved by the clerk of this court.

842 And then, afterwards, to wit, on the 14th day of September, in the year last aforesaid, came said defendants by their solicitors and filed in said clerk's office their appeal bond in said case, and also came said complainants by their solicitors and filed their appeal bond in said case, which said appeal bonds are in the words and figures following, to wit:

Appeal bond of defendant.

JOHN ALLEN AND EDWIN S. TROWBRIDGE, survivors of Aaron Arnold, deceased,
vs.
THE COUNTY OF MORGAN, THE PEORIA, PEKIN and Jacksonville Railroad, Isaac L. Morrison and Henry E. Dummer. } In chancery.

Know all men by these presents that the County of Morgan, as principal, and John N. Marsh, R. Reynolds, W. E. Veitch, L. W. Brown, Wm. Brown, W. N. Wright, Irvin Dunlap, G. W. Clark, F. G. Farrell, J. T. Springer, W. F. Epler, H. E. Dummer, J. H. Devore, Edward P. Kirby, Edward Scott, Geo. S. Russel, John B. Dobyns, R. R. Chambers, W. B. Johnson, William Russel, George Jameson, J. H. Hill, J. W. English, John Leach, W. E. Carter, Thomas Denby, William T.
843 Boyce, John Virgin and William R. Routt and J. T. Holmes, as sureties, are held and firmly bound unto John Allen and Edwin S. Trowbridge, survivor' of Aaron Arnold, deceased, in the sum of one hundred thousand dollars, to be paid to the said John Allen and Edwin S. Trowbridge, survivors of Aaron Arnold, deceased, their heirs, executors and administrators; to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated this day of September, A. D. 1877.

Whereas the above named the County of Morgan hath prayed an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled cause by the circuit court of the United States for the southern district of Illinois: Now, therefore, the condition of this obligation is such that if the county of Morgan shall prosecute its said appeal to effect and answer any judgment affirmed or rendered and all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

Commissioner's seal.

[SEAL.] THE COUNTY OF MORGAN.

Attest:

By SAMUEL M. MARTIN, *Clk.*
J. H. DEVORE.

844 JOHN VIRGIN.	[SEAL.]	WM. B. JOHNSON.	[SEAL.]
DANIEL DEITRICK.	[SEAL.]	WM. RUSSELL.	[SEAL.]
W. H. WRIGHT.	[SEAL.]	GEO. JAMESON.	[SEAL.]
IRVIN DUNLAP.	[SEAL.]	J. H. HILL.	[SEAL.]
JOHN N. MARSH.	[SEAL.]	J. T. HOLMES.	[SEAL.]
G. W. CLARK.	[SEAL.]	J. W. ENGLISH.	[SEAL.]
F. G. FARRELL.	[SEAL.]	JOHN LEACH.	[SEAL.]
J. T. SPRINGER.	[SEAL.]	W. C. CARTER.	[SEAL.]
W. F. EPLER.	[SEAL.]	THOMAS DENBY.	[SEAL.]
H. E. DUMMER.	[SEAL.]	WILLIAM T. BOYCE.	[SEAL.]
J. H. DEVORE.	[SEAL.]	JOHN VIRGIN.	[SEAL.]
EDWARD P. KIRBY.	[SEAL.]	WM. R. ROUTT.	[SEAL.]
EDWARD SCOTT.	[SEAL.]	R. REYNOLDS.	[SEAL.]
GEO. S. RUSSEL.	[SEAL.]	W. E. VEITCH.	[SEAL.]
JOHN B. DOBYNS.	[SEAL.]	L. W. BROWN.	[SEAL.]
R. R. CHAMBERS.	[SEAL.]	WM. BROWN.	[SEAL.]

845 Approved Sept. 14th, 1877.

J. A. JONES, *Clerk.*

(Endorsed:) Filed Sept. 14th, 1877. J. A. Jones, clerk.

Appeal bond of complainants.

Know all men by these presents, John Allen and Edwin L. Trowbridge as principals, and Isaac L. Morrison as surety, are held and firmly bound unto the county of Morgan, in the State of Illinois, in the penal sum of one thousand dollars, well and truly to be paid, they bind themselves, their heirs and assigns, and personal representatives, jointly and severally, sealed with their seals and dated this 7th day of September, A. D. 1877.

The condition of this obligation is such that whereas, on the sixteenth day of July, A. D. 1877, a decree was rendered by the circuit court of the United States in and for the southern district of the State of Illinois, in a certain suit in chancery wherein the said John Allen and Edwin L. Trowbridge, surviving partners of Aaron Arnold, deceased, were complainants, and the county of Morgan and others were defendants against the said county of Morgan for the sum of seventy-
846 two thousand five hundred and thirty-nine dollars and fifty-six cents, besides costs of suit, said sum to be paid within sixty days from date of said decree, with six per cent. interest per annum from date, from which decree the above bounden John Allen and Edwin L. Trowbridge prayed for and were allowed an appeal from the said circuit court to the Supreme Court of the United States upon their entering into bond within sixty days from the date of the rendition of the said decree in the penalty of one thousand dollars, conditioned as the law directs, with security to be approved by the clerk of said court: Now, if the said John Allen and Edwin L. Trowbridge, surviving partners, shall well and truly prosecute their said appeal with effect and without delay, and shall well and truly pay all costs and damages occasioned by the taking of the said appeal in the event the said judgment is affirmed then this obligation shall be null and wholly void; but otherwise to be and remain in full force and effect both in law and equity.

Witness our hands and seals the day and year aforesaid.

JOHN ALLEN. [SEAL.]
EDWIN L. TROWBRIDGE. [SEAL.]
RICHARD ARNOLD. [SEAL.]
847 ISAAC L. MORRISON. [SEAL.]

Approved Sept. 14th, 1877.

J. A. JONES,
Clerk.

(Endorsed:) Filed Sept. 14th, 1877. J. A. Jones, cl'k.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, John A. Jones, clerk of the circuit court of the United States in and for said southern district of Illinois, do hereby certify that the foregoing is a true and correct copy of all the papers filed, and proceedings had thereon in a certain cause, wherein John Allen & Edwin L. Trowbridge are complainants, and the County of Morgan, H. E. Dummer, the Peoria, Pekin & Jacksonville Railroad Company, and Isaac L. Morrison are defendants as fully and completely as the same appear of file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this 8th day of October, A. D. eighteen hundred and seventy-seven, and of our Independence the 102nd year.

[SEAL.] J. A. JONES, *Clk.*

848 Supreme Court of the United States of the October term, A. D. 1877.

MORGAN COUNTY, IMPLEADED, &C., APPELLANT
vs.
JOHN ALLEN AND EDWIN L. TROWBRIDGE, appellees.

Appeal from the circuit court of the U. S. for the southern district of Illinois.

And now comes the appellant, Morgan County, and says there is manifest error in the record and proceedings in the above-entitled case in this, to wit:

1st. The court erred in rendering a decree for the appellees when the decree should have been for the appellant.

2d. The court erred in holding that the vote of Morgan County in November, A. D. 1876, gave authority to subscribe fifty thousand dollars to the capital stock of the Illinois River Railroad Company, and to issue bonds to pay the same.

3d. The court erred in holding that the general assembly of the State of Illinois had the constitutional power to enact the special law
849 approved January 19th, 1857, making valid the subscription of fifty thousand dollars to the capital stock of the Illinois River Railroad Company & directing the issue of bonds to pay the same.

4th. The court erred in holding that the agreement made by the judges of the Morgan County court, with the Illinois River Railroad Company, that the Morgan County bonds should not be delivered & paid out except for work in Morgan County, was not a binding obligation.

5. The court erred in holding that the County of Morgan was not entitled to a credit of seventeen thousand & five hundred dollars for the payments made to liquidate the claims of Dodge, adm'r of Ladd & of Vail, and in determining that the decree in the case of Thomas et al. against Morgan County et al., allowing such credit, was successfully impeached.

6. The court erred in holding that Morgan County was a trustee and could not therefore buy in the claims of Blair and others against the Ill. River Railroad Company, & obtain the benefit of such purchase
850 under the decree rendered in the case of Blair et al. vs. Morgan County et al.

7. The court erred in holding that the appellees were of that class of creditors of the Illinois River Railroad Company who could resort to the bonds of Morgan County for payment, as against the right of Morgan County, as between it and the Illinois River Railroad Company to withhold the payment of its subscription on the ground that said company had never performed its contract to build its road in Morgan County.

8. The court erred in overruling the exceptions of the appellant to the eport of the special master, A. C. Knapp, esqr.

9. The court erred in rendering a decree for interest on the interest coupons of the Morgan County bonds.

Wherefore the appellant prays that the said decree rendered in the above-entitled case may be reversed.

DUMMER, BROWN, RUSSELL AND
J. T. SPRINGER,
Solicitors for the Appellant.

(Indorsement on cover:) No. 337. The County of Morgan, appellant, vs. John Allen and Edwin S. Trowbridge, survivors of Aaron Arnold, deceased. Filed 29th October, 1877. And No. 586. John Allen and Edwin S. Trowbridge, survivors, &c., appellants, vs. The County of Morgan. Filed 18th October, 1878. S. Illinois C. C. U. S.

IN THE

SUPREME COURT

OF THE

UNITED STATES,

December Term, A. D. 1879.

MORGAN COUNTY, Appellant,
vs.
JOHN ALLEN ET AL., Appellees.
} Appeal from Circuit Court of the United States for the Southern District of Illinois.

AND

JOHN ALLEN ET AL., Appellants,
vs.
MORGAN COUNTY, Appellee.
} Appeal from Circuit Court of the United States for the Southern District of Illinois.

BRIEF OF APPELLANT.

BROWN, KIRBY & RUSSELL,
WM. H. BARNES,
WM. M. & J. T. SPRINGER,
} **Attorneys for Morgan County.**

Illinois Courier Steam Printing House, Jacksonville, Ill.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1879.

NO. 337.

THE COUNTY OF MORGAN, APPELLANT,

vs.

JOHN ALLEN AND EDWIN S. TROWBRIDGE, SURVIVORS OF AARON ARNOLD, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

And now comes appellant, The County of Morgan, and by leave of the Court, files additional errors, to-wit:

10. The Court erred in not holding that appellees were estopped by the decree in the suit of R. S. Thomas vs. The County of Morgan; Studwell, Hopkins & Cobb, trustees, for appellees, et al.

11. The Court erred in not holding that appellees were estopped by the suit brought by Studwell, Hopkins & Cobb, trustees, in the United States Circuit Court for the Southern District of Illinois, in the year 1867 vs. The County of Morgan.

12. The Court erred in ignoring the agreement entered into by Studwell, Hopkins & Cobb, trustees, June 5, 1863, to abide the decision of the Courts with reference to said Morgan county bonds.

13. The Court erred in decreeing that any sum whatever should be paid by the county of Morgan to the appellees in this case, for the record shows there is no equity in the bill.

14. The Court erred in not holding that $50,000 in bonds of the city of Jacksonville, delivered to John Allen, appellee in this case, was in lieu of the $50,000 conditionally subscribed by the county of Morgan to the Illinois River Railroad.

15. The Court erred in holding that the county bonds, conditionally issued and placed in the hands of depositaries, were worth *par* at the time the decrees of R. S. Thomas and Blair et al. were rendered—in the years 1866 and 1867—and that said decrees were impeached by the testimony of witnesses that were wholly incompetent, and should have been excluded.

16. The Court erred in not holding that the county of Morgan had the legal right to buy up, from the creditors of the Illinois River Railroad, the bonds of said county, and receive the benefit of said purchases, under the decrees of Thomas and Blair et al., rendered in the years 1866 and 1867, by said county.

17. The Court erred in not holding that the certificate of R. S. Thomas, president of the Illinois River Railroad Company, was not binding upon said company, as decided in 39 Ill., Thomas vs. County of Morgan.

18. The Court erred in holding that after the payment, by the county of Morgan, of $58,900 of the bona fide indebtedness of the Illinois River Railroad Company, and the payment of $9,000 costs, etc., growing out of said litigation: that the decrees of said Court, under which said payments were made, were impeached, and that, too, for the benefit of appellees, whose judgment under which they claim cost them nothing.

19. The Court erred in taking a decree against the county of Morgan for the amount of bonds 81 and 82, or any of said Morgan county bonds whatever.

The Court erred in all the foregoing additional errors by rendering a decree in favor of appellees—as also in the errors originally assigned—and appellant prays that for said errors, said decree should be reversed and the bill dismissed.

WM. BROWN,
WM. H. BARNES,
W. M. & J. T. SPRINGER,
Solicitors for ***Appellant.***

IN THE

SUPREME COURT

OF THE

UNITED STATES,

December Term, A. D. 1879.

MORGAN COUNTY,

Appellant,

vs.

JOHN ALLEN ET AL.,

Appellees.

Appeal from Circuit Court of the United States for the Southern District of Illinois.

AND

JOHN ALLEN ET AL.,

Appellants,

vs.

MORGAN COUNTY,

Appellee.

Appeal from Circuit Court of the United States for the Southern District of Illinois.

STATEMENT OF THE CASE.

Feb. 11th, 1853, a charter was granted to the Illinois Railroad Company by the Legislature of Illinois, authorizing the building of a railroad from Pekin in Tazewell county, *via* Virginia, to Jacksonville, Morgan county. The Act authorized counties and towns on the line of the road to subscribe to the capital stock. One of the conditions in the Act was that the road should be completed within ten years. This time has never been extended by legislative act. At the general election in the fall of

1856, under the general law of 1849, regulating corporate subscription to railroads, there was submitted, among other things, to the legal voters of Morgan county, the question "'for,' or 'against,' a subscription of $50,000, in bonds of the county, to the capital stock of *each* of the following railroad companies, to-wit," naming three different R. R. companies, of which said I. R. R. Co. was one. The opinion of the electors was directed to be expressed upon the ballots, "For subscription," or "Against subscription," so that the voter could vote only "for," or "against," a subscription to all three of the roads. The bonds were to be redeemable March 1st, 1877, and to bear six per cent. interest. (See printed record, pp. 228 to 231.)

In Jan., 1857, an Act was passed (see Private Laws, Illinois, 1857, p. 105) entitled "An Act to amend the charter of the Illinois R. R. Co.," and section 16 of the Act provided that "The votes taken in the counties of Morgan and Mason, and the city of Pekin, for subscribing stock to said railroad company are hereby declared to have been legally made and taken, and stock shall be subscribed by the county courts of said counties, and the proper authorities of the city, in pursuance of the orders under which such votes were taken, and bonds shall be issued for said subscriptions accordingly."

In the fall of 1857 a formal subscription was made by Morgan county, by James Berdan, county judge, of $50,000 to the capital stock of said company. The term of office of Berdan expired in Dec. of that year, and R. S. Thomas, president of the company, was urgent that the subscription be made and the bonds executed before his successor qualified, and it was agreed that the bonds were to be delivered only for work done in Morgan county. (See deposition of Berdan, printed record p. 119, *et seq.*) This understanding was to have been placed on the records, and by some mistake was not, but R. S. Thomas gave this written assurance, viz: "State of Illinois, Morgan county. I, R. S. Thomas, President of "the Illinois River Railroad Company, certify that that portion of said

" railroad situated north of the town of Virginia, in said county, is now in " process of construction, and that portion of said road between Jackson- " ville and Virginia is under contract to be completed by the first day of " December, 1858, and that it is provided in the contract for the construc- " tion of said road that the Morgan county bonds shall be expended for " work done in Morgan county and not elsewhere.

"(Signed) R. S. THOMAS, President Ill. R. R. Company."

So assured, the subscription was made, the bonds were at once filled up. This was done in the office of Elliott & Brown, bankers, and it took several days. During that time it was repeatedly talked of as understood by all parties,—the county by its officers, the R. R. Company by R. S. Thomas, its president, and by Elliott & Brown, the bankers,—that the bonds were to remain in the custody of said bankers, and to be delivered to the railroad company only for work done in accordance with this agreement, known and understood by all parties.

At the time the bonds were so deposited the interest coupons, due March 1st, 1858, were detached, because more than the first half year after the date of the bonds had elapsed before the bonds were so deposited. Subsequently, and while the bonds were so in custody, the coupons due March, 1859, and March, 1860, were detached, and the amount paid by Morgan county to the railroad company for surveys in said county for the location of the road in that county. Beyond these surveys no work was ever done in Morgan county.

Soon after the deposit of the bonds with Elliott & Brown, the railroad from Pekin, in Tazewell county, to Virginia, in Cass county, some forty miles in length, was completed, equipped, and put in operation. Nov. 1st, 1858, the road and its equipments were mortgaged to secure the payment of one million twenty thousand dollars of ten per cent. coupon bonds, and all the bonds were purchased by complainants in this cause, Allen, Trowbridge and Arnold, for two hundred thousand dollars; Stud-

well, Hopkins & Cobb were named the trustees of the bondholders in said mortgage, and entered upon and exercised the trust.

July 12th, 1862, the Ill. R. R. Co. having failed to pay the interest on its bonds, and being insolvent, surrendered the possession of the road to the trustees, Studwell, Hopkins & Cobb, for the use of the bondholders. This was the last meeting of board of directors. This mortgage was foreclosed by bill filed Dec. 17th, 1862, in the Circuit Court of the U. S., Southern District of Illinois, by said trustees, the decree bearing date June 16th, 1863, and sale pursuant thereto was had Oct. 1st, 1863, and these complainants became the purchasers for the nominal sum of four hundred thousand dollars, and after deducting that sum from the total bonds and interest, a judgment was rendered against the Ill. R. R. Co. for the sum of $1,061,292.56 in favor of said trustees.

The time fixed by the charter of the Ill. R. R. Co. for the completion of the road expired Feb. 11th, 1863. It seems that the prospective purchasers were, during that summer, desirous of an act of incorporation from the legislature of Illinois, and that they were having trouble in the matter, for on June 5th, 1863, (see printed record, p. 217—read 1863 for 1853—a misprint) a paper was executed by "Lucius Hopkins and A. Studwell, trustees of the Ill. R. R. Co.," reciting that the said trustees, being desirous of incorporating purchasers of the said railroad, "the undersigned do hereby stipulate that nothing in the act of incorporation which may be passed by the legislature, shall in any way affect the title or right of the trustees, or bondholders, or any creditors of said railroad company, or any person having claim or right to the whole or any portion of $50,000 of Morgan county bonds now in litigation in the Circuit Court of Morgan county, but the right and title to said bonds shall be left to be decided in the suit now pending in the said Morgan County Circuit Court." Six days after this paper was executed an act of the legislature was approved, incorporating the Peoria, Pekin and Jacksonville Railroad Company. Five days after

that date the above decree was rendered, and May 21st, 1864, Allen, Arnold and Trowbridge, complainants in this case, the holders of the said R. R. bonds, and the purchasers under said decree, conveyed the said Ill. Railroad, its equipments and appurtenances to the P. P. & J. R. Co., so incorporated. These complainants, in that corporate capacity, have continued the operation of said road hitherto.

The said county bonds remained in the custody of Elliott & Brown, where they were left, until 1863. Vail and Ladd, judgment creditors of the Ill. R. R. Co., sought by garnishee process, served on Elliott & Brown, to subject the bonds to the payment of their judgments. Elliott & Brown, to protect themselves against the annoyance and hazards of litigation, filed their bill of interpleader, making the County of Morgan, the Ill. R. R. Co., Vail, Ladd's administrator, and Studwell, Hopkins & Cobb, trustees in said mortgage mentioned, respondents to said bill, asking to be relieved from the custody of said bonds. Wm. Thomas and R. S. Thomas subsequently became party-respondents to said bill. By an interlocutory order of the Morgan County Circuit Court, Elliott & Brown were relieved from the custody of said bonds. They were allowed to retain coupons to the sum of $200, as compensation for custody of the bonds and expenses of the litigation, and the rest of the bonds and coupons were placed in the custody of M. P. Ayers & Co., and leave was given to the remaining parties to prosecute their claim to said bonds by their several cross-bills, and the title of the suit was changed to R. S. Thomas *et al.* vs. The County of Morgan. (See printed record, p. 58–9.)

At the September term, 1863, the county of Morgan filed her answer. Isaac L. Morrison, one of the respondents in this case, as well as solicitor for other appellees, signed the same for the county, as solicitor, and on June 1st, 1864, a cross-bill was filed by the county by the same solicitor, making, among others, Studwell, Hopkins & Cobb respondents. (Printed record, pp. 247 to 255.) This answer and bill set up that the bonds are void, as the vote was illegal, and that the bonds had never been delivered, but had been put

into the custody of Elliott & Brown, to be paid out as work was done in Morgan county, and no work had been done in Morgan county, and prayed the Court that all the respondents be enjoined from further prosecuting any claim to any of said bonds, and that they be forever barred of all right to any part of the same. Studwell, Hopkins & Cobb filed an answer and bill of interpleader in said cause, in one document, answering all the bills in the case, and making all the other parties respondents. Thus, it will be seen, the Circuit Court of Morgan county had jurisdiction of the parties who obtained the judgment, and the bonds now in question were a Court fund. (See printed record, pp. 63 to 67.)

This bill was filed at the September term, 1863, of said Court. In said bill and answer, they, Studwell, Hopkins & Cobb, trustees, allege, among other things, that "at and before the time of issuing said bonds, it was agreed and stipulated, between said county of Morgan and said railroad company, that said bonds were to be used by said company in constructing said road between Virginia, in Cass county, and Jacksonville, in Morgan county, and said Elliott & Brown were to deliver said bonds to said company, as the same might be needed for that purpose; thus, so far as was in their power, and those for whom they acted, adopting and ratifying the stipulation of Thomas. They set up their rights under the mortgage above spoken of, and "these respondents say that under said mortgage they became interested in said county bonds from the date of said mortgage," and allege default of interest, and say that at a meeting of the directors of said Ill. R. R. Co., on July 12th, 1862, at which Studwell and Hopkins, two of the trustees on their behalf, were personally present, the road, its equipments, its franchises and *effects* were surrendered to them, by means whereof the said county bonds were turned over to them, "*so far as said company were able to deliver them.*"

Respondents further say that the general assembly, at its last adjourned session (June, 1863,) enacted and granted a new charter for these re-

spondents, and alleged that the county bonds were now held by them, for the use and benefit of said new company, to be applied upon the construction of said railroad between Virginia and Jacksonville, in compliance with the aforementioned agreement between the old company and the county of Morgan. They allege "that by virtue of all the proceedings hereinbefore set out, they have become the owners, entitled to the possession of said county bonds, and that their said right attached thereto from and after the date of said mortgage; and they further insist that any and every act of said railroad company, after the date of said mortgage, looking or tending to the use or disposal of said county bonds in any manner other than in constructing said railroad between Virginia and Jacksonville aforesaid, was done, if at all, wholly without right, and is null and void, insisting that said company could not rightfully dispose of said bonds in any manner whatever, except in the actual construction of said railroad between said places."

As against the claim of R. S. Thomas, they allege that he is estopped by his contract "that said bonds should be used in the construction of the road between Virginia and Jacksonville aforesaid, and not otherwise, and *but for which contract said bonds would never have been issued.*" As against the claims of Ladd and Vail, they "deny that process can be levied or served upon said Elliott & Brown, whereby to reach said county bonds for any purpose, they being simply custodians of said bonds, the real debtor on said bonds, if any, being the county of Morgan. They pray that upon the hearing of this cause, these county bonds may, by this Court, be decreed to be the property of these respondents, to be held and issued by them, or by the railroad company recently chartered, to and for the purpose of constructing said railroad between Virginia and Jacksonville aforesaid, *in accordance with the contract made between the old company and the county of Morgan*, and that the claimants, Thomas and others, be forever barred," &c.

At the September term, 1865, of the Morgan Circuit Court, said

cause was heard. (See decree, printed record, pp. 60 and 61.) The decree recites the evidence, and there is included the "stipulation (above set out) of Studwell and Hopkins, trustees of Illinois R. R. Co., that the right to Morgan county bonds shall be tried in the Morgan County Circuit Court in pending suit." The decree decides against the claims of R. S. Thomas, Wm. Thomas, *Studwell, Hopkins & Cobb*, Vail, and Ladd's estate, and dismissed their bills of interpleader. All the parties, except Morgan county, prayed an appeal to the Supreme Court, and the appeal was perfected. R. S. Thomas, Wm. Thomas, Ladd and Vail, assigned errors. Studwell, Hopkins & Cobb did not. Whether they thought themselves bound by the stipulation made by them, or felt satisfied with the equity of the decree, does not appear. Isaac L. Morrison, one of the respondents in this case, as well as solicitor for complainants, appeared in the Supreme Court as attorney for the county. The opinion of the Supreme Court is reported in 39 Ill. Reports, at p. 498. The decree of the Court below was affirmed as to all the parties except as to Vail and Ladd. The opinion held, 1st. That the stipulation of R. S. Thomas, as president of the Ill. R. R. Co., of the date of the 7th of September, 1857, made the performance of work in Morgan county a condition precedent to the delivery of any of the bonds of the Ill. R. R. Co., so far as was necessary to conclude his rights and to estop him from claiming the bonds. 2d. That the stipulation of R. S. Thomas, for the Ill. R. R. Co., is not binding upon any creditor of the Ill. R. R. Co. who is not chargeable with notice of this stipulation, but binding on those having notice. 3d. That R. S. Thomas and Wm. Thomas were chargeable with notice, and Vail and Ladd were not, and that a decree should have been entered in their favor, directing the delivery to each of them of an amount of bonds *equal in market value* to the sums due them.

At the March term, 1866, of said Court, in conformity with the opinion of the Supreme Court, the claim of Isaac Vail, $5,094.91, and the

claim of Ladd's estate, $1,913.19, were ordered to be paid out of the Morgan county bonds.

This decree recites that evidence was heard in open Court, as to the value of the bonds, and the Court finds their market value to be 40 cents to the dollar, and bonds numbering from 8 to 42, both inclusive, were applied to the payment of the sums so adjudged, and costs; and these bonds were delivered to the county by order of the Court, and were cancelled. Isaac L. Morrison, one of the respondents in this case, signed said decree as one of the solicitors for Morgan county.

On the 13th of September, 1867, James Blair and others filed a creditors' bill, as judgment creditors of the Ill. R. R. Co., in the Morgan Circuit Court against Morgan county, the Ill. R. R. Co. and M. P. Ayers & Co.

At the November term, leave was given by the Court to H. T. Thomas, administrator of Richard S. Thomas, and Francis Low, judgment creditors of the Ill. R. R. Co., to become parties plaintiffs to the said creditors' bill. The judgments of part of said plaintiffs, viz: Blair, Addis, Dye, Swift and Rooney, had been recovered in 1860, 1861 and 1862. The judgments of the other plaintiffs in said creditors' bill had been recovered recently, before the filing of the said creditors' bill. The aggregate amount of said judgments was about $41,500. The Ill. R. R. Co., in the cases in which judgments had been recovered recently, pleaded by, and in the said case of Blair and others vs. Morgan county et al., appeared by, B. S. Prettyman, as vice-president and attorney of said company. Answer was filed by Morgan county, denying the allegations of the bill, and Isaac L. Morrison, one of the respondents in this case, signed the answer as one of the solicitors of Morgan county, and H. G. Whitlock, then County Judge, also signed the same of counsel.

After the suit of Blair et al. vs. Morgan county et al. had been commenced in the Morgan Circuit Court, Messrs. Studwell, Hopkins & Cobb,

trustees, in the Ill. R. R. Co.'s mortgage, who had foreclosed said mortgage, filed a creditors' bill in the United States Circuit Court for the Southern District of Illinois, to subject the remaining Morgan county bonds to the payment of the same judgment which is the basis of this proceeding.

At the special term, 1867, of the Morgan Circuit Court, it was agreed, in substance, by the parties to the suit of Blair et al. vs. Morgan county et al., that the case should be heard at that term; that a decree should be made upon an agreed state of facts in favor of complainants; that the Morgan county bonds remaining should be applied, as far as they would go, to the payment of said plaintiffs, judgment creditors; that they should be redeemed by the county of Morgan for $12,000, one-half payable in the bonds in controversy at par, and the remaining $6,000 in money; that the claims of said creditors should be regarded as paid in full, and be surrendered to the county; that if Wm. Thomas, who had a claim of $4,000 against the Ill. R. R. Co., would consent to surrender his claim, he should share pro rata with said judgment creditors in the suit of Blair et al., in the distribution of the $12,000; but, if he would not do so, the $12,000 was to be paid out pro rata to said judgment creditors—Blair and others—and that said plaintiffs in the creditors' bill should pay the costs. This agreement was carried out in this way: The case was tried *pro forma* on the agreed facts, and a decree was rendered in favor of the complainants. The $12,000 in bonds and money was paid. Wm. Thomas declined to take his pro rata share of the $12,000, and that sum was distributed among said creditors, and their claims surrendered.

To the suit of Studwell and others, in the United States Circuit Court, vs. Morgan county and M. P. Ayers & Co. (the custodians of the bonds), the said defendants (Mr. I. L. Morrison acting as solicitor for all the defendants) answered that all the Morgan county bonds originally deposited with Elliott & Brown had been paid out under decrees of the

Morgan Circuit Court, and thereupon the suit of Studwell et al. was dismissed.

Wm. Thomas had a claim of $4,000 against the Ill. R. R. Co., as assignee of two orders, of one of which the following is a copy, for which two orders he paid $2,000:

"OFFICE OF ILL. R. R. Co., VIRGINIA, April 2, 1859.

WILLIAM BROWN, Banker, &c., of Ill. R. R. Co.: Pay to Allen & McGrady, or order, two thousand dollars in Morgan county bonds, it being for account of purchase of the contract from Allen & McGrady, and for so much in lieu of draft No. 36, for $4,000 returned, and charge the same to this company.

$2,000. (Signed) R. S. THOMAS, President.

M. H. L. SCHOOLEY, Sec'y."

This is endorsed by Allen and McGrady to William Thomas. The second order for $2,000 was in all respects similar, and was in like manner endorsed.

In this proceeding, the last decree in the "Elliott and Brown" case (printed record, p. 62) and the decree and master's report in the "Blair" case (Idem, pp. 68-69) are attacked as fraudulent. The only testimony impeaching these decrees is to be found in the depositions of Isaac L. Morrison, a respondent and solicitor of complainants in this case, and H., G. Whitlock, his law partner, who was, at the time of the decree, presiding judge of the county court and a solicitor for Morgan county. (See record, pp. 94-105, inclusive, and 128-9.) Morrison alone attempts by his testimony to impeach the former. An inspection of the last "Vail and Ladd" decree shows that in every particular the Circuit Court followed the direction of the Supreme Court in the case. (See 39 Ill., 498.) It appears that said Morrison, as counsel for the county, wrote that decree. (See McClure's testimony, p. 105). That he had been attorney for the county in

that case from the filing of the bill to the final decree. By his testimony it is attempted to impeach a decree procured by his client, through his services, for fraud in its procurement. It is attempted by his oral testimony to dispute the solemn recital of the decree that the Court heard evidence on in open Court as to the market value of the bonds. The decree is entered May, 1866; his deposition was taken March, 1876. He states that he has a pecuniary interest in the result of this suit. He is also a respondent in default, as well as solicitor here for those who are proceeding against him and who seek through his testimony to impeach a decree which he, as solicitor, obtained for his old client, Morgan county, who paid him $4,700 for his services. He was also attorney for Morgan county in the "Blair" suit during its whole history. Mr. Whitlock was also an attorney in this case, and was besides County Judge at the time. Their knowledge of the subject matter testified about was acquired in that capacity. Morrison swears that the county paid him $4,700 for professional services in this litigation.

As to the value of the bonds, Wm. Thomas (rec., p. 117) testifies that he paid 50 cents on the dollar for them. Hockenhull (rec., p. 117) testifies that he paid 65 cents for Tonica & Petersburg Morgan county 6 per cent. bonds. These were voted at the same time the Ill. R. R. Morgan county bonds, and matured at the same time, and were never in litigation. Farrell (rec., p. 118) paid 60 cents for some of the latter bonds. Thomas (p. 122) says after the decision in 39 Ill. he didn't think that they would have sold for anything like what he gave for them, (viz: 50 cents). The "Vail and Ladd" and the "Blair" decrees were rendered shortly after the opinion in 39 Ill. Hook (rec., p. 127) testifies that in 1870 he bought one of those bonds issued to Blair for 65 cents on the dollar. He states that money has been worth ten per cent. since 1866. It was not contended that these claims, which were discharged by Morgan county, were not valid claims against the Ill. R. R. Co. The depositions of Prettyman (p. 198); Bergstresser (p. 200); Beesley (p. 202); Vail (p. 203); Low (p. 205), show that they were

for services rendered or supplies furnished, such as ties, castings, etc., to the said company. There is no evidence in the record tending to impeach the validity of these as just claims againsi the Ill. R. R. Co.

William Thomas, after rejecting the offer to share *pro rata* in the $12,000 paid under the decree in the "Blair" case upon condition of surrendering his claim, instituted a suit in the Morgan Circuit Court in April, 1868, against Morgan county to recover his claim out of the bonds disposed of under the "Blair" decree. His bill does not appear in the record. A demurrer to the bill was filed for the county by Isaac L. Morrison, one of the respondents in this case, and was sustained and the bill dismissed. Thomas appealed. The opinion of the Supreme Court is found in 59 Ill ,p. 479. Said Morrison appeared then for the county. At the very outset of the opinion the learned Judge uses this significant language: "The prominent facts of this case, as we gather from the *statement and brief of appellants*, and not controverted by *appellee*, are substantially as follows." The Court had decided against Thomas in 39 Ill., 496, holding that he was not entitled to the bonds, they being issued on the condition that they should be paid out only for work done in Morgan county, and that he took the orders with notice of this condition. In this case the Court assumed from the above statement, not controverted by said Morrison for the county, that the P., P. & J. R. R. Co. was the successor of the Ill. R. R. Co. in the sense that the new company was but a reorganization of the old one, professing the same property rights and burdened with the same obligations and duties, both public and private, and that as the P., P. & J. R. R. Co. had constructed the road the condition was performed, and that Thomas was entitled to compensation. The Court had not been advised, as it has here, that the P., P. & J. R. R. extended the road to Jacksonville upon a subsequent consideration of $50,000 paid to the company on the procurement of Allen, a complainant here, as president of that company. The Court uses this language: "Upon the theory that these bonds are a trust fund in the custody of the Court, it is the duty of

the Court to see that it is not wasted or misapplied, as the demurrer admits it has been in the respects alleged in the bill of complaint." The P., P. & J. R. R. Co. was a defendant to said bill, and the Court says: "These views are based, in some degree, upon the fact that the present organized railroad company assert no claim to any portion of this fund, but abide the stipulation set forth in the bill." The decree was reversed and remanded.

It seems that after the transfer of the road to the P., P. & J. R. R. Co., the new organization above spoken of was desirous of municipal aid in the construction of the road. (See testimony of Reynolds, rec., p. 130.) The citizens of Jacksonville, in Morgan county, were applied to by Allen, one of the compainants in this case, the president and manager of the road, for municipal aid, with the threat that the road would be diverted from Jacksonville unless $50,000 was subscribed by the city. A vote was proposed for a subscription of $50,000 by the city of Jacksonville. There was some doubt about being able to carry the vote. A citizens' committee sought legal advise of Isaac L. Morrison, one of the respondents in this case, who, as attorney for the county in all its litigation thereto, as to whether the Morgan county bonds retired by the "Vail and Ladd" and "Blair" decrees could be used in this way. He gave an opinion that they could not. Allen then agreed to bring the road to Jacksonville for $50,000 of bonds of the city of Jacksonville. The vote was carried, the bonds paid, and the road built.

The Morgan county bonds, redeemed and taken up from the creditors in the "Blair" suit, 53 in number, remained in the office of the clerk of the county court of Morgan county, until March 9th, 1869, when 13 of them were canceled, and the remainder, 40 in number—numbered from 61 to 100—were delivered by the County Judge of Morgan county, H. G. Whitlock, to Isaac L. Morrison, one of the respondents in this case, and partner of Whitlock, as agent of the P. P. & J. R. R. Co., to be handed

over to the company as a donation to that road on its completion to Jacksonville. An arrangement was made between Isaac L. Morrison, one of the respondents in this case, and John Allen, one of the complainants, who was then president of the P. P. & J. R. R. Co., that Morrison should get all the Morgan county bonds he could from the county, and Morrison and himself for the P.P. & J. R.R. Co., should divide them equally between them. $20,000 of the bonds and coupons attached, were obtained from the county, and one-half retained by Morrison and the other half by Allen. On the 28th of June, 1870, Morgan county instituted a suit against John Allen and the P. P. & J. R. R. Co., to compel the restoration of the said forty bonds on the ground that they had been *fraudulently* obtained, and when the answer of Allen disclosed the fact that Morrison had retained one half of said bonds, he was made party to the suit, and answered, admitting this fact. By this time Thomas had got his case back to the Circuit Court, and it was, by consent, consolidated with this cause, and Schooley and West had also filed bills as creditors of the Ill. R. R. Co., and they were all tried together, and the Court decreed (recorded pp. 288 to 292) that the 20 bonds of Morgan county and coupons attached, in the hands of Allen, as president of the P. P. & J. R. R. Co., and 18 and coupons attached, in the hands of Morrison, (two of said bonds having been disposed of by him before he was made a party to the suit) should be restored to the county. That the claims of Thomas, Schooley and West be paid out of the bonds so restored, or the proceeds of their sale, or by the county. Appeals were prosecuted from this decree by Allen and Morrison, and by the county, and the opinion of the Court appears in this record, pp. 293 to 298, and is reported in 76 Ill. Reports, 121.

The Court for the third time reviewed the claim of Wm. Thomas. It was first held that the claim could not be sustained (see 39 Ill., p. 496) because the bonds were placed in the hands of Elliott & Brown, and only to be paid out for work in Morgan county, and that Thomas, as a director of the Ill. R. R. Co., had notice of the condition. It was next held (see 59

Ill., 497) on the facts then before the Court, admitted by the demurrer, and appellants' statement, not controverted by Morrison, attorney for the county, that Thomas was not a director at the time, and had no notice of the condition. Thomas, in this case swears (see record, pp. 115 to 117) that he was a director in 1862, and says in answer to the question whether he was a director at the time the bonds were issued, "I think not, but cannot state certainly about that," but he does not deny his actual knowledge of the condition. The Court was then required to assume that the P. P. & J. R. R. Co. was the successor of the Ill. R. R. Co., and that road having built the road to Jacksonville, the condition was performed, and Thomas's claim could be sustained. The Court now say, in the facts before the Court, that there was no condition, and that this delivery of the bonds to Elliott & Brown as a matter of fact, was an absolute delivery to the Ill. R. R. Co., so far as the stockholders and creditors of the company are concerned, and that the county owes Thomas his claim, unless he, or his assignees, Allen & McGrady, are estopped by some act of theirs from resorting to the county for payment. That while R. S. Thomas (39 Ill., 496) might bind himself to treat the subscription as conditional, and so might other creditors, yet there was no evidence that Thomas, or Allen & McGrady were privies to such agreement. The Court reviews the evidence then before them, and conclude that it is not sufficient from which to hold that there was a conditional delivery.

In the case at bar the deposition of Berdan (record, p. 119) taken in this case, shows conclusively that there was such a conditional delivery, and the answer of Studwell, Hopkins & Cobb, who are plaintiffs in the judgment sought to be enforced here for the benefit of complainants, alleges that *but for this condition these bonds would never have been issued*, fully corroborating Berdan. See cross-examination of Elliott in this case (pp. 108 to 111); also see testimony of Elliott in former case, and of Wm. Brown. (Record p. 274 to 277). Such is the history of this long litigatino prior to the filing ofthe bill in this case.

On the 2d day of January, 1874, Allen, Trowbridge and Arnold, appellees, exhibited their bill in the Circuit Court of the United States for the Southern District of Illinois, alleging that they are the equitable holders and owners of the judgment of Studwell, Hopkins and Cobb, trustees, against the Illinois River Railroad Company, rendered by the United States Circiut Court in June, 1864, amounting to $1,061,292.56. It appears from the record that appellees became the purchasers of the whole issue of the Illinois River Railroad bonds for the sum of $200,000; that at the sale under the foreclosure proceddings, they became the purchasers of the Illinois River Railroad for the sum of $400,000, and yet hold the large judgment as equitable owners under Studwell, Hopkins and Cobb.

The bill also admits the payment of divers sums by Morgan connty, on account of this stock subscription, under various decrees of the state courts, and that certain bonds were retired under those decrees and payments. The bill also claims that Morgan county is entitled to credit only for the amount actually paid out, and that she is not entitled to credit for the amount of the judgments against the Illinois River Railroad, which she acquired by such payments.

Morgan county answered (printed transcript, p. 52), admitting the subscription to the capital stock of the railroad company, and the making of the bonds simultaneously with the written assurance of the president of the railroad company that the bonds shoud be used in the construction of the road in Morgan county, and that upon such express consideration, the bonds were placed in the hands of depositaries, who also held the stock of the company, to be paid out for work as it progressed in the county of Morgan. Also alleges that no work was ever done in Morgan county, except some surveying, which was paid for with coupons taken from said bonds.

The answer further alleges the payment of said bonds, under various decrees, to judgment creditors of the Illinois River Railroad Company as follows:

To Ladd & Vail,	$17,500
" Elliott & Brown,	200
" Defense of suits,	3,000
" James Blair et al.,	32,000
	$52,700

The answer further shows the particular bonds retired by Morgan county under the various decrees, which covers all of the bonds alleged to have been issued.

Morgan county also answers, saying that the appellees procured the city of Jacksonville to contribute $50,000 to the construction of the railroad from Virginia to Jacksonville upon the ground and representation that the bonds in question were no longer a subsisting claim against the county.

It is further answered that claims of complainants are barred by the decrees of the Morgan Circuit Court; that Morgan county had the right to and did buy in the outstanding claims against the Illinois River Railroad, and hold them in bar of any claim of the company against the county; that the appellees are barred, their claims being *res judicata*.

The amended answer (printed transcript, p. 81) denies the legality of the subscription to stock; the vote was illegally taken; that Morgan county owes the Illinois River Railroad nothing; that appellees are not that class of creditors entitled to call on Morgan county for the payment of their demand.

After the issues were formed, the Circuit Court of the United States made an interlocutory order referring the case to Anthony L. Knapp, Esq., as special master. (Printed transcript, p. 85.) By this interlocutory decree, it was held that the bonds and coupons in question are assets of the Ill. R. R.; that complainants were the equitable owners of the judgment of Studwell, Hopkins & Cobb, amounting to $1,061,292.56, and are entitled to the payment of the same out of the assets of the Ill. R. R. Co.

The master was directed to report, amongst other things, the amount of money *actually paid* by Morgan county to the creditors of the Ill. R. R. Co.; the amount of bonds actually delivered to Wm. Thomas et al.; the amount of taxable costs and necessary legal expenses which Morgan county has paid in litigation relating to said bonds; whether Morgan county is entitled to any other credit in respect to said bonds.

The order of reference also directed the master to calculate the amount of bonds and coupons issued by Morgan county, adding legal interest on matured coupons, and from such coupons, and interest thereon, deduct credits to which Morgan county is entitled, as specified by this order of reference.

The master made his report (printed transcript, 86) to the June term, 1877, finding Morgan county indebted to the Ill. R. R. Co. $71,140.75. This conclusion was reached by allowing, against the county, interest on the interest-coupons, and allowing Morgan county no credit for the demands against the Ill. R. R., which she paid or bought, except for the actual amount paid out by her.

The substance of the interlocutory decree was to hold:

1. The vote taken in Morgan county, on the question of subscribing to the capital stock of the three railroads, was a legal vote.

2. The bonds were legally and unconditionally issued, and became assets of the Ill. R. R. Co.

3. That Morgan county was in a fiduciary position, and could not purchase claims and offset them against a claim of the Ill. R. R. against her.

4. That appellees were not concluded by the stipulations of Studwell, Hopkins & Cobb, under whom they claim, nor by the decrees of the United States Circuit Court and the Circuit Court of Morgan county, to which they were parties.

estoppel, the legal superstructure can be no stronger than the original legal rights of the Illinois River Railroad Company.

The position hitherto contended for by complainants has been, that the Illinois River Railroad Company, as to the subscriptions to its capital stock, was the holder, in the nature of a trustee, for the benefit of its creditors. They now, in the absence of the company, seek to enforce the payment of that subscription. Under such circumstances, they not being the holders of the bonds for a valuable consideration, by assignment in accordance with our statute, before maturity, and without notice of the claims of Morgan county, any defense which Morgan county might have made against the railroad company can be made here.

Rev. Stat. Ill., 1845 and 1874, "Negotiable Instruments."

Bebohradsky vs. Kuhn. 69 Ill., 547.

First Nat. Bank vs. Strang, 77 Ill., 559.

Sturgiss vs. Miller, 80 Ill., 241.

The true position being that if Morgan county, in its corporate capacity, has either a legal or equitable defense against any claim of the Illinois River Railroad Company, growing out of the subscription of $50,000 to the capital stock of that company, the claim of the complainants is defeated, it is insisted that the Illinois River Railroad Company had no legal claim against the county by reason of such subscription, for the following reasons:

1st. The subscription was made without warrant of law.

2d. The consideration for such subscription wholly failed, and, to collect the amount thereof, is inequitable.

3d. Assuming the subscription to have been legally made, the legal liability under it has been discharged.

II.

The vote of Morgan county in 1856 conferred no legal authority upon the County Court to subscribe $50,000 to the capital stock of the Ill. R. R. Co. The act of the general assembly of Illinois of July 29th, 1857, making valid the subscription, and directing the issue of the bonds in question, was unconstitutional, The complainants, not being innocent purchasers, have no claim to the bonds in controversy, nor their aquivalent.

Under the constitution and laws of Illinois, a county has no power to subscribe to the capital stock of railroads except upon the authority of a vote of the people of the county authorizing such subscription.

The People vs. Cass county, 77 Ill., 438.

The burden of showing that the bonds of a municipal corporation are lawfully issued, and that the laws in regard to their issue have been complied with, rests upon those who seek to recover them.

Wright vs. Bishop, 80 Ill., 302.

Jackson County vs. Brush, 77 Ill., 59.

Meadleport vs. Ætna Life Insurance Company, 82 Ill., 562.

The vote taken in morgan county in 1856, upon which the authority to make the subscription to the capital stock of the Illinois River Railroad Company is rested, was, as appears from the record, (p. 215) upon an order of the County Court, submitting, as a single proposition to the people, to vote for or against authorizing the County Court to subscribe $50,000 to the capital stock of the following railroad companies, to-wit: To the Jacksonville and Carrollton Railroad Company, $50,000; to the Illinois River Railroad Company, $50,000; and to the Tonica and Petersburg Railroad Company, $50,000. (record, p. 215.)

This order required that the vote should be a single vote, and as a matter of fact there was a single vote, for or against the subscription to

the capital stock of each of those three roads. A voter was compelled to vote for all three or against all three. The friends and retainers of each road were, *pro hæc vice*, the friends and retainers of each of the others. The weak and unpopular line, which could not otherwise be carried, was thrust upon the voter as a rider, and he must vote against his conscience and choose $50,000 to a useless, and it may be, an offensive corporation, or vote against a one which the interest of his county demanded. It may hay have been that neither road had a majority favorable to it, and yet by this ingenious combination, by which the supporters of each were, all unwilling, it may be, delivered to the other two, the county was saddled with all three. It may have been that one or two of the roads would have been built without county aid, but seeing their opportunity, filled the office of riders to the one needing the aid, and thereby forced the county to make contribudion to each of them in order carry the other. The vote was carried for all three of the subscriptions by a majority of only three votes. The question whether such a vote was, under the law of 1849, authorizing municipal corporations to vote for and against subscriptions to the stock of railroad companies, a legal vote, has been presented to the Supreme Court of Illinois, and that Court has held repeatedly that it was not a legal vote, and that such a vote gave no power to the authorities of municipal corporations to make a subscription binding upon the corporations they represented.

Fulton county vs. Miss. and W. R. Co., 21 Ill., 372–4.

People vs. County of Tazewell, 22 Ill., 147.

Clark vs. Board of Supervisors, 27 Ill., 310.

In the case of Fulton County vs. Miss. and W. R. Co., the Court say: "The law (of 1849) evidently contemplates a vote for or against a subscription to some one company only, specifying the company. The order is for a subscription to the M. and W. Co., and the P. & S. R. Co., seventy-five thousand dollars to each. This is not only not pursuant to the law,

but is manifestly unfair. A single isolated measure, such as a railroad, may not invite a majority of a county to whom it is proposed. It may favor, if constructed, one portion of a county more than another, and thereby be prevented from receiving a clear majority vote, such as the law clearly contemplates shall be given. Is it fair in order to accomplish this object to attach another measure to it to be voted on at the same time, which may benefit the opposing portion of the county? The law never intended that two roads should be coupled together, and the people forbidden to vote for one if they did not also vote for the other—the one road being really a bribe offered for votes for the other. The truth is, the voters of Fulton county have never had an opportunity to vote, and never have voted this subscription, for the question was at no time distinctly before them. The question before them was, will you vote for a subscription to two roads? Neither road has received the approving vote of the people, and until that is done, until the naked single question shall be fairly presented to those voters, they ought not to be bound or injuriously affected by any such jockeying management and log-rolling. We do not hesitate to say this proposition to vote on two roads at the same time was not authorized by the law, and is a fraud upon the people. The order made by the Board of Supervisors, in thus obtaining the vote of the people, is considered as unauthorized by the act."

In the case of the People vs. County of Tazewell, the Supreme Court of Illinois held that the law of 1849 did not authorize the submission of a proposition for a subscription to the capital stock of two roads, in the same submission, in such a manner that the voter had no option to vote for the one and against the other.

In Clarke vs. Board of Supervisors of Hancock county, bonds of the county of Hancock had been issued, *and were in the hands of innocent purchasers*, and the suit was on interest coupons against the county of Hancock. The Court adhered to the same doctrine, with this qualification,

that "when the bonds have been issued and purchased in market, and have passed into the hands of *bona fide* holders, good faith, justice, and every principle of fairness require that these bonds should not be held invalid for any but the most weighty reasons."

2. The bonds in controversy have never passed into the hands of innocent parties. The complainants are not purchasers, nor holders of any of the Morgan county bonds, and never have been. As a matter of fact, in 1857, they were placed in the possession of Elliott & Brown as depositaries, where they remained until, by an interlocutory decree rendered in the case of Elliott & Brown vs. Morgan county et al., they were deposited with M. P. Ayers & Co., and there remained, subject to the order of the Morgan Circuit Court, until bought in and taken up by the county of Morgan. Morgan county has always kept these bonds in sight, except for a short time, when John Allen, one of the complainants, and I. L. Morrison, obtained them from the custody of the County Court, and, so soon as it was ascertained they were out of their place, Morgan county, by judicial process, compelled their return. The county has so conducted herself as to protect herself, and prevent persons from becoming innocent holders of them.

3. This question of the validity of the subscription and the issue of the bonds has never been before presented in any of the litigation growing out of the subscription of Morgan county and its bonds. The lapse of time, as we apprehend, is is not a material matter, so long as the rights of third persons, as innocent purchasers, do not intervene; nor can there, for the same reason, be any question growing out of any action that might be construed as an alleged ratification of the issue of the bonds. The plaintiffs, holding no Morgan county bonds, are not in a position to raise any such question. No one but an innocent holder of the Morgan county bonds could do so.

4. It seemed to be admitted that, for some reason, the subscription

of Morgan county to the capital stock of the Ill. R. R. Co. was not valid, and so an attempt was made by legislation to remedy the otherwise fatal defect. The railroad, under the disguise of obtaining an amendment to its charter, has attempted to legalize this subscription.

In 1857, an act was passed (see private laws of 1857, p. 105), the title of which law is as follows: "An act to amend the charter of the Illinois River Railroad Company," approved January 29, 1857. This law contains 16 sections, 15 of which are provisions which are really amendments to the charter of the Ill. R. R. Co. The 16th section is as follows:

"Sec. 16. The votes taken in the counties of Morgan and Mason and the city of Pekin, for subscribing stock to said railroad company, are hereby declared to have been legally made and taken, and stock *shall* be subscribed by the County Courts of said counties and the proper authorities of said city, in pursuance of the orders under which said votes were taken, and bonds *shall* be issued for said subscriptions accordingly."

In order to uphold the attempt of the legislature of Illinois to compel Morgan county to subscribe $50,000 in bonds to the Illinois River Railroad, it must appear that the power exists in the general assembly to compel that county to incur a debt against its will. The power to compel the creation of the debt necessarily involves the power to compel the taxation to pay it. If there was no constitutional inhibition, the question would be more difficult.

By section 9 of article 5 of the constitution of 1848, it is provided:

"The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes."

This section of the constitution is held by the Supreme Court of Illinois to be a limitation upon the legislative department prohibiting the en-

actment of laws conferring upon those corporations the right to assess and collect taxes for any other than corporate purposes.

Sleight vs. People, 74 Ill., 47.

Town of Lebanon vs. O. and M. Ry., 77 Ill., 539.

The People vs. Trustees of Schools, 78 Ill., 136.

What is a corporate purpose, it is not necessary to determine; it is quite sufficient that it is not a necessary corporate purpose "that a tax be imposed for the payment of a debt not incurred by the authority imposing the tax, and for the payment of which it is in no wise responsible."

Sleight vs. The People, 74 Ill., 49.

If the subscription was illegal, no liability attached through it to Morgan county; it was as if nothing had been done. If the act accomplishes anything, it is to make Morgan county liable when she would not otherwise be. To impose upon her this debt, is to impose on her the necessity of taxing to pay it, which is prohibited by the constitution. The Illinois River Railroad Company conceded that there was no liability on the part of Morgan county by the application for this extraordinary legislative aid, and, unless it is effective, the subscription by Morgan county is *ultra vires* and void.

We claim that the general assembly of the state of Illinois had no constitutional power to make the vote of 1856 valid, and to legalize the issue of the bonds in controversy, and that the special act of January 29, 1857, is void. It will be observed that the special law referred to (the 16th section) is mandatory. No discretion is given. The language is, "stock *shall* be subscribed," the "bonds *shall* be issued for said subscriptions."

It is designed by this law to make legal that which was illegal; and, if it be held constitutional, it is, in effect, holding that the legislature of Illinois can impose a debt upon a municipality without its consent, whereas

the Supreme Court of Illinois has repeatedly held that the legislature has no such power.

The People vs. Mayor et al., 51 Ill., 18.

The People vs. Salomon, 51 Ill., 38.

The People vs. Chicago, 51 Ill., 58.

Madison County vs. The People, 58 Ill., 463.

Hessler vs. Drainage Com's, 53 Ill., 105.

Lovingston vs. Wider, 53 Ill., 302.

Barnes vs. Town of Lacon, 84 Ill., 461.

Marshall vs. Silliman, 61 Ill., 218.

This question of the constitutional power of legislatures over municipal corporations to compel subscriptions for railroads or local purposes, is discussed by Judge Cooley, with his well-known ability, in his book on taxation, and many authorities on the point are cited by him.

See Cooley on Taxation, pp. 482 to 495.

His conclusion is, that where the legislature has gone beyond giving permission to vote a subscription, and impose a tax to pay it, the Courts have generally held that the legislation was unconstitutional.

If it is conceded that a legislature can compel a municipal corporation to subscribe to the capital stock of a railroad company, and, as a necessary consequence, compel the collection of taxes to pay such subscription, such a centralization of power is inconsistent with local self-government. It carries with it the right to make a contract for parties without their consent—to impose a debt upon a municipal corporation against its will. This placing of municipalities at the mercy of legislative majorities is conceding a power to utterly destroy local self-government.

The New York Courts, following early decisions, have approved

such legislation, but the Courts of most, if not all, the other states, including Illinois, have decided the other way.

As this case involves questions of the construction of the constitution of the state of Illinois, and the construction of a statute of Illinois (the act of 1849, under which the vote of Morgan county was taken in 1856), upon principles adopted by the Supreme Court of the United States, the decisions of the Supreme Court of Illinois, though not absolutely binding on the Court, would, without some controlling reason, be followed.

We refer the Court to a recent Illinois decision:

Sleight vs. The People, 74 Ill., 47.

Judge Scholfield, in giving the opinion of the Court, says, among other things, (citing quite a number of Illinois cases to sustain him): "But it has been repeatedly held by this Court that the legislature is powerless to impose a debt upon a municipality against its consent."

The following cases seem to us to be as nearly in point as we ever find them:

Marshall et al. vs. Silliman et al., 61 Ill., p. 218.

Wiley et al. vs. Silliman et al., 62 Ill., p. 170.

The material facts in Marshall et al. vs. Silliman et al. are, that the town of Brimfield, without the authority of any law, voted to subscribe $15,000 to the capital stock of the D., P. and H. R. Co. To sustain this vote and subscription, a law was passed, which enacted that "the election held in Brimfield township, at which it was voted to subscribe $15,000 to the D., P. and H. R. Co., is hereby legalized and confirmed, and is declared binding upon said township, and may be collected," &c. The bonds were issued to pay this subscription, and, by delivery, passed out of the hands of the authorities of Brimfield township, and suit was brought to enjoin the railroad company from negotiating the bonds, and to enjoin

the county treasurer from collecting the taxes to pay the interest on said bonds.

Judge Lawrence, in giving the opinion of the Court, states the question thus: "We come now to the question whether the legislature can create a debt against a municipal corporation for municipal purposes, and subject it to a tax for its payment, without its consent." He answers the question by saying: "Our new constitution expressly prohibits this for the future, and the decisions of this Court substantially hold that it could not be done under the constitution of 1848. That was the effect of the curative act under consideration, and it was therefore void. The curative act gave no discretion. It declares the subscription binding, and that it may be collected. It did not authorize the corporate authorities to subscribe to the stock or not, but left to the town authorities only the ministerial function of executing the behest of the legislature. Our conclusion is, that the so-called curative act was a violation of the constitution."

We claim, too, that even if the legislature possessed the constitutional power to pass the curative act of January 29, 1857, the 16th section was void, becase it was not in conformity with section 23 of Art. 3 of the constitution of 1848.

The section referred to provides that "no private or local law which may be passed by the general assembly shall embrace more than one subject, and that shall be expressed in the title." The construction of this constitutional provision, and its applications, have been before the Supreme Court of Illinois in numerous cases. The general rule laid down by the Supreme Court of Illinois is, that if the provision objected to is *germane* to the general objects of the statute, it is not within the purview of the constitutional provision referred to. That rule, however, is of no very great aid. Taking this formula, it is quite as difficult to apply it to a given case as it would be to apply the language of the constitution—indeed, it seems to us more so. We think this 16th section is within the mischief intended

to be prevented by the provision in the constitution of 1848, which we have quoted. The evil sought to be prevented was the practice of procuring legislation by stealth, by inserting a provision in some convenient place in the body of a law, which would not probably pass, if the title of the act called attention to it. What does the constitutional provision referred to mean? Is it not that if the title is such that it does not give notice to a legislator of reasonable intelligence that he might expect to find, from reading the title, some such provision as that objected to, then such a case is within the purview of the constitutional provision?

When the Supreme Court of Illlinois say that if the provision is germane it is sufficient, what precisely is meant by *germane?* Referring to Webster, the most pertinent definition is, " related." But clearly the wourt does not mean that if there is some "relation," some connection, no matter how remote, it is sufficient to satisfy the constitutional restraint.

Take the case of The People vs. Mellen, 32 Ill., p. 181.

The title of the act in question was, "An Act to repeal certain Acts therein named." The first section enumerates and repeals the Acts named. They are: " An Act to Incorporate the City of Warsaw," approved February 12, 1863, and " An Act to reduce the Act Incorporating the City of Warsaw, and the several Acts amendatory thereof into one Act, and to amend the same, and all Acts passed in aid of either of the aforesaid Acts." Under this title, the following section was inserted:

Sec. 3. That all the estate, both real and personal, heretofore or now held by the Board of Education for the City of Warsaw, is hereby declared to be invested in the School Trustees, to be elected under the provisions of this Act, in the same manner the school property of other towns in this state is now by law held."

Sec. 4 makes the trustees successors in all pending suits brought by the Board of Education.

Now, the Court reason in this way:

"The 1st section repeals the "certain acts" there referred to, for they are the only acts named in the repealing act. Whatever is done beyond this, is outside of the title of the act, and, as the constitution makes that title the limit of the legislative power, it is outside of and beyond that power."

The Court holds the 3d and 4th sections to be void, because the case is within the constitutional provision referred to. How does the case at bar differ from the case cited in principle?

The 16th section of the "Act to amend the charter of the Ill. R. R. Co." is no amendment of such charter, but is affirmative legislation upon quite another matter. The vote attempted to be legalized was taken under the general law of 1849.

We say the 16th section of this private law is not *garmane*. Let us test the correctness of the proposition in this way: Suppose a law had been passed with this title—"An Act to legalize the vote of Morgan county in 1856, to subscribe to the capital stock of the Ill. R. R. Co."—would not an act that, with such a title, should amend extensively the charter of the Ill. R. R. Co. be held, so far as the amendments to the charter of the company were concerned, to be within the constitutional restraint upon legislation, and if so, ought not the converse of this proposition (which is our very case), be decided in the same way?

Again, there is this further difficulty: The 16th section of the "Act to amend the charter of the Ill. R. R. Co." provides that the *vote* taken in the county of Morgan was legally made and taken, etc. Now, the vote was for a subscription to the capital stock of three roads. Were the subscription to the three roads all legalized? If it be replied that the section goes on to say that the vote taken in Morgan county for subscribing stock *to said railroad*, limits the legalization of the subscription to one of the three roads—viz: the Ill. R. R. Co.—we rejoin that such a result would

be most unjust. The order for the vote in 1856, originally made by the Morgan County Court, compelled voters to vote for or against three subscriptions to three different roads, in one single vote. The order was on the basis of "log-rolling." Many of the voters of Morgan county, who did not want the county to subscribe for the Ill. R. R., voted for it, probably in order to get a county subscription to a road they did want built. Now, it is asked that the subscription to one of these roads shall be legalized (which, it may be, would not have commanded a majority but for its being tied to the other two roads), and the subscription to the two other roads be pronounced void, as made without authority. Could a legislator who looked to the title of this act for his guidance as to what he was voting for, have had any idea, when he voted for this private law, that he was voting for a provision so unjust, if the 16th section of this private act be sustained?

The case at bar, upon the principles decided by the cases to which we have referred, should, upon the defense thus far presented, have resulted in the dismissal of complainants' bill.

1st. The order of the Morgan County Court, submitting the question of voting for or against a subscription of stock to three distinct roads, was not authorized; the vote, under such a submission, was a nullity; no authority was thereby given to subscribe $50,000 to the capital stock of the Ill. R. R. Co., and the bonds in controversy are not, therefore, of binding obligation on the county of Morgan.

2d. None of the Morgan county bonds in controversy have ever been held by the complainants, or by any innocent purchasers. None of them have ever been put upon the market.

3d. The general assemby of the state of Illinois had no constitutional power to declare the vote of Morgan county in 1856 a valid vote, nor any power to enact that "the stock shall be subscribed," and "the bonds shall be issued," and the curative act of 1857 is void.

4th. Even if there was power to pass a curative act, it is void, because it was not passed in conformity with section 23 of article 3 of the constitution of 1848.

5th. The question whether the bonds did or did not, as a matter of fact, pass into the possession of the Ill. R. R. Co. by their deposit with Messrs. Elliott & Brown, is, as respects the defense thus far presented, an immaterial question.

In the case of Marshal et al. vs. Silliman et al., the bonds had passed into the hands of the railroad company, and yet the Court held that their negotiation should be enjoined.[1] We shall, however, present several other independent grounds of defense.

III.

The consideration for the subscription of $50,000, to be paid in the bonds of Morgan county, wholly failed, and to collect the amount thereof is inequitable.

Sec. 9, chap. 98 of the Revised Statutes of Illinois, 1874 (which is the same as sec. 10, Revised Statutes of 1845, page 385), is as follows:

"In any action upon a note, bond, bill, or other instrument in writing, for the payment of money or property, or the performance of covenants or conditions, if such instrument was made or entered into without a good and valuable consideration, or, if the consideration upon which it was made or entered into has wholly or in part failed, it shall be lawful for the defendant to plead such want of consideration, or that the consideration has wholly or in part failed; and if it shall appear that such instrument was made or entered into without a good or valuable consideration, or that the consideration has wholly failed, the verdict shall be for the defendant; and if it shall appear that the consideration has failed in part, the plaintiff shall recover according to the equity of the case,—provided, that nothing in this section contained shall be construed to affect or impair

the right of any *bona-fide assignee* of any instrument made assignable by this act when such assignment was made before such instrument became due."

This statute has been in force in Illinois since 1845, and cases arising under it have been frequently before the Supreme Court of that state.

The doctrine of that Court is, that the same rule applies, with reference to making the defense afforded under that statute, to one who holds a note or bond which has not been assigned, as applies if the instrument is in the hands of the payor.

Sturgess vs. Miller, 80 Ill., 241.

It is further the doctrine that the doors are necessarily thrown open to the admission of all evidence, parol or written, to disclose the whole truth about the consideration of the questioned instrument, as being the only mode by which effect can be given to the statute. It must be known what *really* was the consideration.

Mann vs. Snyser et al., 76 Ill., 365.

In discussing the question presented, it becomes material to determine what was the real "*good and valuable consideration*" for the subscription and bonds in question, and in doing so we are not limited to the words of the written subscription, nor yet to the bond. A note or bond or other instrument for the payment of money, is, necessarily, but a part of the agreement between the parties, leaving out as it does, all that portion of the agreement which induced the undertaking to pay the money, and if that part could not be shown by parol there would be a liability to failure of justice.

Mann vs. Snyder, *supra*.

Consideration, is defined to be: "The material cause which moves a contracting party to enter into a contract."

2 Blackstone's Comm., 443.

Bovier Dic., tit.: Consideration.

"The cause which moves a contracting party to enter into an agreement;" "The material cause of a contract;" "Compensation;" "Equivalent."

Webster's Dic., tit.: Consideration.

Then, when we ascertain what was the "material cause," the "compensation," the "equivalent," which moved Morgan county to subscribe $50,000 in bonds to the Illinois River Railroad Co., we have the consideration for the contract, whether it be in bonds or simple subscription. Can it for a moment be doubted in the light of the evidence, that this "material cause," this "compensation," this "equivalent," was the construction of the road in Morgan county? Can the Court believe that the subscription would have been made had that "material cause," "compensation," "equivalent," not been promised?

It will at once be answered, "the stock of the company was the moving cause, the consideration. This Court cannot, with the doors wide open for the ascertainment of the truth as to the *real* "equivalent," and in the light of reason, common experience, and the evidence in the record, believe that the municipality, Morgan county, had embarked in speculation in railroad stocks. It would do violence to our common sense to be forced to believe any such thing. That stock may have been the apparent consideration, and would uphold a promise for the benefit of an innocent and *bona fide* assignee; but, under the statute and decisions above quoted, the question is: What was the "real," "good and valuable" consideration for the undertaking? "The interest and advantage of the county," is the language of an order of the County Court on the subject (record 217). "The interest and advantage of the county," could only be promoted by building the road in the county. This purpose of the

county, this understanding of the consideration, is spread all over its records, and has prompted its action. Such also, was the understanding of the president of the railroad. Mr. R. S. Thomas, in order to induce the county to issue the bonds, certified, in writing, to the County Court, that the company had "placed their said railroad under contract to be completed by the first day of December, 1858, from Virginia, in Cass county, to Jacksonville, in Morgan county, and that it is provided in the contract for the construction thereof, that the Morgan county bonds shall be expended for work done in Morgan county and not elsewhere, and this Court being satisfied that the interest and advantage of the county will be promoted," &c., it is ordered, &c., &c. (Record 217).

Whether this certificate of Thomas be a contract or not, it makes it certain what the consideration was which induced Morgan county to contract. The consideration was that these bonds should be expended in constructing a railroad in that county. If this was not the consideration, why should the county have required such a certificate, and if it was not the consideration why would the president of the railroad company give such a certificate? The charter, the order of the County Court submitting a proposition to the people to subscribe; the order for the issue of the bonds; the certificate of the president of the road; the refusal to let the bonds go into the hands of the company until the work was done in the county, are all facts pointing with irresistible force to the conclusion that the "material cause" which led Morgan county to contract was to be the construction of the railroad in that county. If any further evidence is wanted that such was the real consideration for these bonds we find it in the solemn admission of the trustees, Studwell, Hopkins & Cobb, in their answer and bill of interpleader in the case of R. S. Thomas vs. Morgan county.; they are the persons under whom complainants' claim, and complainants are bound by their assertion that such bonds would never have been issued but for that especial consideration. (Record, p. 66.)

Has the consideration failed in whole or in part? It has altogether failed. The record shows that no work was ever done south of the town of Virginia, in Cass county, and that none whatever was done in Morgan county, and therefore it is that Morgan county now holds and refuses to surrender or pay the remainder of these bonds, though the time limited for the work passed by before the P. P. & J. did the work.

True it is there is a railroad from Virginia to Jacksonville, constructed under a charter to the Peoria, Pekin & Jacksonville Railroad Company, but this was built by another corporation, and for building it, the citizens of Jacksonville paid to Mr. Allen, the complainant here, the sum of $50,000 (record p.), under his and Mr. Morrison's representation that these bonds could never be collected from Morgan county, or used for that purpose, and also Mr. Allen and Mr. Morrison, for that building, obtained unlawfully from the custody of the county clerk, $20,000 of these particular bonds, which they have, by process of law, been compelled to return to the county. (Record p.).

This point has never before been raised in this form either by Mr. Morrison whilst he was defending the interests of Morgan county, nor by other counsel, nor ourselves. Therefore the question is open and should be considered on its merits. Were this a question between man and man in a dispute about the payment of a bond for $100, there would be no doubt of merit, and we can see no difference in the application of legal principles when the sum involved is $75,000 and one of the parties a long suffering and much vexed people—the people of the county of Morgan.

The statute cited provides that if the consideration has only in part failed, the judgment shall be according to the equity of the case. Now, applying equitable principles here, we find that the complainants have enriched themselves by obtaining the whole of the Illinois River Railroad for a comparatively small part of their demand, and on that demand

now seek to further enrich themselves by making the county pay much for nothing.

It will probably be said that the want or failure of consideration was not pleaded below, and cannot therefore be raised for the first time here. We insist that the answer of Morgan county does aver the facts which constitute the failure of consideration, and it is useless, under the rules of pleading, to characterize the result. The Courts, on the facts being pleaded, will determine whether such facts constitute a failure of consideration or not, without being told by litigants what the technical name of such a defense is.

IV.

The Circuit Court should have suppressed or disregarded the testimony of Isaac L. Morrison, H. G. Whitlock, and Elliott & Brown, and the summary of the facts in the case of Wm. Thomas vs. Morgan County.

The depositions of Mr. Morrison and Mr. Whitlock—so far as their testimony conduces to impeach the decrees of the Circuit Court of Morgan county rendered in the cases of R. S. Thomas et al. vs. Morgan county et al., and James Blair et al. vs. Morgan county et al., or disclose matters which the witnesses would not have known if they had not been engaged and consulted by their client—should have been suppressed or disregarded by the Court below. We ask this on the ground that these witnesses were the solicitors of Morgan county in the cases above referred to.

The fact that they were solicitors for Morgan county is admitted. Apart from the testimony of Mr. Morrison—admitting his relation to Morgan county as its solicitor, or one of its solicitors—the record shows that in all the cases touching its bonds, in which Morgan county was defendant, the answers of Morgan county are signed by Mr. Morrison as solicitor, or one of its solicitors, and the answer of Morgan county in the

case of Blair et al. vs. Morgan county (record, p. —) is signed by Mr. Whitlock as one of its solicitors, he being also, at the time, County Judge of Morgan county.

The sole object of the testimony of Mr. Morrison and Mr. Whitlock is to impeach the decrees rendered in the cases of R. S. Thomas et al. vs. Morgan county et al., and Blair et al. vs. Morgan county et al., under which all the Morgan county bonds were retired. It is sought, by the testimony of these solicitors, to prove that, while they were acting as solicitors, such things were done, or omitted to be done, or done in such a manner by them and under their advice (in contradiction of the recitals and terms of said decrees) so that some, or all, of the advantages secured by said decrees should be denied to, or taken away from, Morgan county. It is insisted that in the case of R. S. Thomas et al. vs. Morgan county et al.—while the decree shows that 35 bonds were paid out and retired—that Morgan county, by impeaching the decree, should be held to have retired not quite half that number, and one of these witnesses avows that since the rendition of this decree he has acquired a pecuniary interest; that the decree be impeached, to the detriment of his late liberal client, Morgan county.

The rule of evidence for the protection of clients against the disclosure of privileged communications, made to their solicitors and attorneys, is well settled. It is stringent in its application, and wide-reaching. It extends to all knowledge obtained by the attorney or solicitor which he would not have obtained if he had not been consulted professionally by his client. A communication made to a solicitor, if confidential, is privileged in whatever form it is made. If it would be privileged when communicated in words, spoken or written, it will be privileged equally when conveyed by means of sight instead of words. Thus, an attorney cannot give evidence as to the fact of the destruction of an instrument which he has been admitted, in confidence, to see destroyed.

Phillips on Evidence, Vol. 1, p. 169.

Phillips on Evidence, Vol. 1, p. 176.

It will not be denied that the sole purpose of these depositions is to impeach the decrees which they, as solicitors, obtained. If that was not their purpose, they certainly had no place in the case. Then they should have been suppressed or disregarded. The privilege of keeping or disclosing the facts belonged not to Mr. Morrison and Mr. Whitlock, but to their client, Morgan county. Without this testimony, there is no fact or circumstance on which to question the decrees referred to.

2d. The depositions of Edward R. Elliott and Wm. Brown, taken in the case of R. S. Thomas et al. vs. Morgan county et al., on the ground that they were taken in a suit in which the parties were different. It has been, and will be here, insisted that Allen et al. stand in another relation to the bonds in question different from the trustees, Studwell, Hopkins & Cobb, and, if so, this point is well taken.

To make depositions taken in another case admissible, the suit must be in relation to the same subject-matter, and *between the same parties in interest.*

Goodrich vs. Hanson, 38 Ill., p. 498.

3d. The summary of the facts in the case of Thomas vs. Morgan county et al., as reported in 76 Ill., p. 120. This is obviously hearsay testimony.

It was asserted below that the Supreme Court of Illinois "have fully settled and determined" the matters presented by the pleadings in this case, and so relieved the Court from any judicial labor or responsibility. The decision of this case, they said in substance, was a mere matter of arithmetical calculation as to how many bonds, and how much money, shall be decreed to be paid to the complainants. Indeed, they seemed to

offer, in a polite way, to relieve the Court even from that mechanical labor by the assurance that their "calculations have been made with the greatest care," and, as they verily believe, *clearly* represent the rights of their clients. The plaintiffs in this suit do not stand in the same position as did the plaintiffs in any one of the suits decided by the Supreme Court of Illinois. The proofs in this case are not the same that have been made in any of the cases in the State Courts in which the Morgan county bonds were the subject-matter of litigation. None of the legal questions now presented were raised in the litigation referred to. Then, this Court is not bound by any opinion of the State Court farther than the argument and legal principles presented by such opinion ought to control the judgment and conscience of this Court. Emphatically is this so, when, by referring to the opinion of Judge Lawrence in one case and the opinion of Judge Scholfield in another of the cases mentioned, it is found that upon several important points these opinions are inconsistent and contradictory.

The case of Meyer vs. Erhardt, 88 Ill., 457, approves C. J. Marshall, in Cohens vs. Virginia, 6 Wheat., 399: "It is a maxim, not to be disregarded, that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relations to the case decided, but their possible bearing on all other cases is seldom completely investigated."

V.

Conceding that the Morgan county bonds were delivered, by their deposit with Elliott & Brown, to the Illinois River Railroad Company in 1857, and then constituted a trust fund to which creditors of the Illlinois

River Railroad Company might resort for the payment of their claims, yet Morgan county was not a trustee, but the debtor of a trust fund, and was not precluded from possessing itself in any legal way of any valid claims against the Illinois River Railroad Company at a discount, and of offsetting such claims at their full value in payment of what it owed said company; the bonds in controversy never passed into the hands of plaintiffs or of any innocent purchasers, and as a matter of fact, Morgan county has retired all the Morgan county bonds originally deposited with Elliott & Brown by redemption or what substantially amounted to a purchase, at a discount of valid claims, the full value of which the county is entitled to, as a credit on its bonds.

1. Morgan county was not a *trustee.*

It is an essential element to constitute a trustee that the property he holds, by a legal or possessory title, should, so far as the beneficial interest is concerned, in good conscience belong to some one else, either because there is an express declaration as to who should have the beneficial interest, or because the title has been obtained by fraud, or because, upon equitable principles, without fraud, while the title is found in one, the use of it belongs to another. Our adversaries do not recognize the difference between a trustee and a debtor to a trust fund. As an illustration: Mr. William Thomas, we will suppose, subscribed four thousand dollars to the capital stock of the Ill. R. R. Co. The company, in the building of its road, owed four thousand dollars to a contractor, and to pay him, gave its due-bill to the contractor for four thousand dollars. The contractor, under a pressure for money, sells the due-bill for four thousand dollars to Mr. Thomas for two thousand dollars. No formal settlement takes place between the Ill. R. R. Co. and Mr. Thomas. The plaintiffs in this suit get a hint that there was a subscription on the part of Mr. Thomas, and he is made a party to this suit. When Mr. Thomas answers, he presents the due-bill for four thousand dollars as a payment by offset. If, then, the plaintiffs in this suit should say to Mr. Thomas, "You paid but two thou-

sand dollars for the due-bill; account to us for the other two thousand dollars; you are a trustee; you cannot get any advantage by speculating in the trust fund," would this Court hold that Mr. Thomas was a trustee, and give him credit for two thousand dollars only? Suppose Mr. Thomas, tired of waiting for the payment of his two orders which he bought of Alfen and McGrady, and willing to take what he gave, had sold the two orders, amounting to four thousand dollars, to the county of Morgan for two thousand dollars before the institution of this suit by plaintiffs, would the Court have any hesitation in allowing Morgan county credit for the four thousand dollars? Morgan county at no time was a trustee, so far as these bonds were concerned. When first issued, they were placed in the hands of Elliott & Brown, as depositaries, and when taken from them the bonds were placed in the hands of M. P. Ayers & Co., and they did not come into the possession of Morgan county until they were fairly entitled to the ownership of them by virtue of the execution of the decrees rendered in the cases of R. S. Thomas et al. vs. Morgan county et al., and Blair et al. vs. Morgan county et al.

The solicitors for the complainants in the Court below cited quite a number of cases which we assume they will again rely on as authority for the proposition, not only that the bonds in controversy are a fund to which the creditors of the Ill. R. R. Co. may look for payment, but that Morgan county is a trustee, and, as such, precluded from buying in its bonds at a discount.

The authorities then cited did not seem to us to go beyond the recognition of general principles applicable to trusts and trustees, which no lawyer would think for a moment of controverting, and we suggest that they have no special application to the disputed point whether Morgan county was a trustee.

We are not denying that the auditors of an insolvent corporation may pursue its assets into the hands of all other persons except *bona fide* cred-

itors or purchasers; nor that a party who obtains a trust fund without consideration paid, would be held, with or without notice, to account for the funds; nor that a court will never let a trust fund fail for want of a trustee; but we are denying that Morgan county was a trustee.

As a specimen case of the inapplicability of the authorities cited, take the argument based on the case of the Gilman Railroad Company vs. Kelly et al., 77 Ill., p. 426.

The proposition the gentlemen undertake to establish is, that Morgan county, having paid its bonds to the Ill. R. R. Co. for stock, and being a stockholder, could not buy in any of its bonds at a discount, because it was a trustee for the creditors of the Ill. R. R. Co., and having bought in its bonds at a discount, it should now account for the discount. They say the case in 77 Ill. is in point. In that case they argue that the Supreme Court of Illinois held that directors of a railroad company were the agents of the stockholders, and therefore trustees. If, they argue, the agent, the director, is a trustee, *a fortiori*, must be the principal, the stockholder. Mogan county was a stockholder in the Ill. R. R. Co., and was, therefore, a trustee and bound to see that the funds of the railroad company were equitably applied to the payment of its debts. The case in 77 Ill. is this; the directors had contracted with a construction company to build the road, and took stock in the construction company, paying a large price and issuing stock to give the construction company the control of the road, and doing other wrongful acts, all to enrich themselves at the expense of the stockholders. The suit was brought to make the directors account, and to set aside, so far as it would be of any avail, the wrongful acts of the directors.

The Court recognized the not very new doctrine, that trustees could not do an act that placed their interest in antagonism with the interests of the *cestui que trust*, but the Court will fail to find anything in the case, either in the way of argument or authority, to give any color to the other

steps in the argument to be presented by our adversaries—that is, that if directors of a railroad company are trustees for the stockholders, because their agents, the stockholders, because the principals, must therefore be trustees for somebody; and that inasmuch as Morgan county was a stockholder, it must therefore be a trustee; and if a trustee, then a trustee for the plaintiffs as creditors of the Ill. R. R. Co.

Now, if we look into this case of Gilman vs. Kelley et al. we find the case has no resemblance to our case; that the stockholders were calling the directors to account because they had contracted for the building of the road with a construction compaay, of which some of the directors became a part—and were issuing stock to give the construction company the control of the road, and doing other wrong things to make a profit for themselves instead of the stockholders. Well, the Court say, as we might expect, that the directors are trustees for the stockholders, and they must account for what they made, and undo what they had done, so far as the rights of third parties were *not* concerned.

The case approves the doctrine, not very new, that the director of a railroad company is agent and trustee for the stockholders, and cannot legally do anything that places his interest in antagonism with the interest of those for whom he is agent—but none of the cases heretofore cited say anything to the effect that, because the directors are trustees, the stockholders for whom they are trustees are themselves trustees for the creditors of the company.

The cases of Jackson vs. Ludeling, 21 Wall., 616; Gore vs. Tide Water Canal Company, 24 How., 263; Coleman vs. 2d Ave. R. R. Co., 38 N. Y., 201, have heretofore been cited in support of the theory that Morgan county was a trustee. These cases do not support the conclusion—they are dissimilar in facts.

2. Under the decree in the case of R. S. Thomas et al. vs. Morgan county et al., thirty-five bonds were bought in by Morgan county. Ac-

cording to the terms of the said decree and the report of its execution, which was approved by the Court, these thirty-five bonds were legally paid out, bought in by Morgan county and cancelled. After a lapse of more than ten years, this suit is instituted to impeach the decree under which said bonds were disposed of, by attempting to show that at the time of the rendition of said decree no evidence was taken by the Court as to the value of the bonds, and that the bonds, found by Court to be worth forty cents on the dollar, were worth sixty-five cents or more, and claiming that the difference should now be paid by Morgan county to the plaintiffs as creditors of the Ill. R. R. Co.

We insist that the decree cannot be impeached after so great a lapse of time, by the kind and degree of evidence presented, and under the peculiar circumstances of this case.

First. If, as we suppose will be the case, the evidence of Mr. Morrison and Mr. Whitlock is disregarded, as we think we have shown it should be, then there is no evidence that the Court did not, in good faith, as the decree shows, hear evidence as to the value of the bonds, and find from the evidence that the bonds were worth 40 cents on the dollar.

The testimony of Mr. McClure and of Mr. Dummer is only negative. They know nothing about it.

Secondly. The evidence, on the basis of admitting Mr. Morrison's testimony, is not sufficient to impeach said decree. The opinion of a majority of the witnesses is, that the bonds were worth, in 1866, about 65 cents on the dollar. This evidence is, to a large extent, not based on a knowledge of actual sales of bonds. The witnesses testify as to values at a period almost ten years before their testimony is taken, and one witness—Mr. Wm. Thomas, especially interested in knowing the value of these bonds—testifies that the bonds, in 1866, were not worth more than 40 cents on the dollar, if so much as that sum.

Thirdly. The lapse of time is a strong argument against disturbing this decree.

Fourthly. The peculiar circumstances of the case, according to principles recognized by Courts, are a strong reason for refusing to disturb this decree. The records show that Mr. Allen, one of the plaintiffs (for the use of himself and his co-plaintiffs) and Mr. Morrison, obtained, without authority of law, forty of the bonds in controversy, as a nominal donation to the owners of the P., P. and J. R.—that is, to these plaintiffs—without any consideration whatever. These bonds were divided equally between Mr. Allen, for the road, and Mr. Morrison.

The Circuit Court of Morgan county ordered that the forty bonds—on the ground that the transaction was illegal, and that there was no power adequate to authorize a gift of the bonds—should be restored to the county of Morgan. Then, this suit is brought to get the same bonds, or their equivalent, by impeaching and setting aside the decree under which the thirty-five bonds were paid out. And, to accomplish this, Mr. Morrison, who admits that his pecuniary interest would be promoted by the success of this suit, is introduced as a witness to impeach a decree which, as the solicitor of Morgan county, for a liberal fee, he procured.

Mr. Morrison, certainly so far as he has any interest, would be estopped from attacking this decree, and so we think should be Mr. Allen (acting for himself and co-plaintiffs), because, through him, has Mr. Morrison become interested.

2. Under the decree rendered in the case of Blair et al. vs. Morgan county et all., sixty-five bonds were paid out, and fifty-three were redeemed and delivered over to Morgan county. Twelve of the bonds were retained by the judgment creditors, plaintiffs in the Blair suit. It is claimed by the plaintiffs that fifty-three of the Morgan county bonds were not literally paid out, but that twelve bonds and $6,000 in money only were paid out, and for that sum, fifty-three (53) of the bonds came into the posses-

sion of Morgan county; that Morgan county was a trustee, and so precluded from taking any advantage of its situation to obtain any benefit to itself, to the detriment of the *cestui que trust*—the plaintiffs in this suit—and that therefore Morgan county should account to the plaintiffs for the sixty-three bonds, less $6,000 in bonds, and bonds that would be the equivalent of $6,000 in money. It will be apparent that the attack upon this decree is quite different from that made upon the decree in the case of R. S. Thomas et al. vs. Morgan county et al. We claim, in answer to this position of the plaintiffs:

First. That Morgan county was not a trustee, but simply the debtor of a trust fund. We rely upon the reasons already given to sustain our position on this point.

Secondly. As Morgan county was not a trustee, it was at liberty to buy any claims against the Ill. R. R. Co. that were valid claims, and that were rightly payable out of the assets of the Ill. R. R. Co.; that Morgan county had the legal right to buy such claims at a discount, and, having bought them, had the same right to be paid out of the "trust fund"—viz: the assets of the Ill. R. R. Co.—as the original claimants had.

Thirdly. Morgan county did buy in the claims of all the creditors who were plaintiffs in the Blair suit, and should be allowed the full amount of all the claims so bought, as a payment on her subscription.

The idea was obviously entertained, at the time the creditors' bill of Blair et al. was filed, that a creditor at large could not maintain a creditors' bill, but that it was necessary, to maintain a bill, to obtain a judgment. Under this impression, judgments were recovered by all of said creditors who had not previously obtained judgments against the Ill. R. R. Co. It has been decided since the filing of said creditors' bill, and had been decided before that time, that a creditor at large might file a creditors' bill to reach the assets of a defunct, insolvent corporation, as well as in some other cases.

To anticipate the probable objection that the judgments bought in by Morgan county, or rather some of them, do not prove the existence of a valid claim—because against a defunct corporation that could not be sued at law and could not enter its appearance in a suit—evidence has been introduced to prove that, at the time the Blair suit was disposed of, all the claims of the plaintiffs in the suit were meritorious and valid claims, so that their validity does not depend upon the fact that they were reduced to judgments.

It has been objected that some of the claims bought in were not valid; that of R. S. Thomas, represented by his administrator, H. T. Thomas, because once rejected by the Supreme Court, and other claims, because they were barred by the Statute of Limitations.

1. The claim of R. S. Thomas is proven to be a just and meritorious claim by very abundant testimony. It is shown by the record of the directors that it was allowed in 1862. Wm. Thomas testifies that he personally, as one of a committe, audited the claim, and found it just. Schooley, the secretary of the Ill. R. R. Co., and Prettyman, a director, testify to its correctness. It further appears from the testimony that by an authority entered of record, the secretary, Schooley, was authorized to draw for the payment of the R. S. Thomas claim on the bonds in the hands of Elliott & Brown, or any assets the company had. An order was drawn, and presented to Elliott & Brown for payment, and protested by them, just as in the case of Wm. Thomas, the only difference being that R. S. Thomas, by personal services, and by advances of money to something over $3,000, earned all of this claim that was allowed him, in building the road, worth $800,000, which plaintiffs bought in on bonds of the company, purchased for $200,000, while Wm. Thomas bought his claim at a discount of 50 per cent.

Now, is there any legal reason why Wm. Thomas should be allowed his claim, and that the claim of R. S. Thomas should be rejected? The

only reason suggested is, that the Supreme Court of Illinois, in the case reported in 39 Ill. Rep., rejected R. S. Thomas's claim because he had made an agreement that the Morgan county bonds should not be paid out except for work in Morgan county. The same decision was made in the same opinion against Wm. Thomas's claim, among other reasons, because Allen & McGrady, the assignors of Wm. Thomas, were parties to the agreement that the bonds of Morgan county should not be paid out except for work in Morgan county. In the case in 76 Ill., Wm. Thomas's claim is allowed, reversing what was decided in the former case.

Could any good reason be given for a discrimination against the claim of R. S. Thomas?

If it be held that there was no such agreement as justified Morgan county in declining to pay the bonds, and the bonds are held to be assets of the Ill. R. R. Co., can any reason be given—based on any legal principle, or on common sense—why these plaintiffs should be paid out of such assets, and R. S. Thomas be denied payment? We think not.

2. Two claims, based on accounts (those of Lowe and Bergstresser are the only ones named), were objected to on the ground that, in 1867, they were barred by the statute of limitations.

As between these claimants and the Ill. R. R. Co., upon well settled rules, such a defense is a personal privilege, and no one else can insist upon its being pleaded, and it is a plea not favored by the Courts of law even.

If there are exceptions allowed by Courts of equity, where there are two claimants seeking to be paid out of the same fund at the same time, it is only by reason of some superior equity in one of the claimants.

In 1867, in the Blair suit, no question was made as to the bonds not being part of a trust fund, by reason of a want of authority to issue them, and it was conceded that the bonds deposited then with M. P. Ayers &

Co. were part of a trust fund. These claimants were not before the Court. The trustees, M. P. Ayers & Co., acting under the order of the Court which had placed the bonds in their custody, would not be allowed to set up the Statute of Limitations as a defense. We insist that the trustee would not have been allowed to plead the Statute of Limitations. No doctrine is better settled than that a trustee cannot set up such a defense.

3. It is claimed that some authority to sustain the position of complainants may be derived from the law of set-off. It is, in substance, argued that in 1867, when the Blair suit was decided, Morgan county was barred upon legal principles from buying in at a discount, say the claim of Blair (who recovered a judgment against the Ill. R. R. Co, after a defense, long before its dissolution as a corporation), and insisting that it should have the same advantage that Blair himself would have had. We think the analogies to be derived from the law of set-off are in our favor.

A question was decided by the United States District Court for the Souther District of Illinois, in the bankruptcy case of James C. Leonard, which furnishes a fair illustration:

James C. Leonard, a banker at Beardstown, Ill., made a very bad failure. Immediately on his suspension of payment, he made an exhibit of his affairs, when it was feared that he could pay but a very small dividend. H. T. Foster owed Leonard a note, say for $3,000. He immediately, and before Leonard filed his petition in bankruptcy, bought up certificates of deposit that had been issued by Leonard, at a very large discount, and the question presented to the Court was, whether Foster should be allowed, as an off-set to his note, payable to the assignee, the full amount of the certificates of deposit.

The off-set, as claimed by Mr. Foster, was allowed.

If this Court should review the decision in the Blair case, the evidence on file proves that the rights of the parties were, at that time, such that

the decree rendered was such a decree as any court, however the case might be contested, should have rendered. When the case of Blair and others was decided upon an agreed state of facts, nothing was agreed upon that is not now shown by the testimony to have been true at the time that case was disposed of. The only concession then made by Morgan county was, to let the case come to a hearing at the November special term, 1867. There is no ground based on evidence for impeaching the decree, and, if reviewed, the decree is just and right.

VI.

Conceding again, for the purpose of presenting another independent ground of defense, that the subscription of Morgan county was valid, and that the bonds were issued by due authority, we maintain that, as between the Ill. R. R. Co. and the county of Morgan, there is no legal or equitable obligation on the part of Morgan county to pay any of the bonds conditionally deposited with Elliott & Brown to liquidate the subscription of $50,000 to the capital stock of the Ill. R. R. Co.: that the plaintiffs, buyers of the bonds of the Ill. R. R. Co., are not of that class of creditors who are entitled to be paid out of the subscription of Morgan county, irrespective of the question whether, as between the county and the company, the county of Morgan ought to pay its subscription: that while creditors of the Ill. R. R. Co., who parted with their labor or materials to build the railroad on the faith of and reasonable expectation that subscriptions of stockholders were a fund to which they might confidently look for the payment of their claims, and had no guaranty for such payment beyond the fact that such a fund existed, might claim that they had a right to the bonds in controversy, although, as between the company and the county, the county of Morgan ought not to pay anything, the plaintiffs, as buyers of the bonds of the Ill. R. R. Co., did not buy the bonds of the company with any expectation, or right to expect, that the bonds of the company would be paid out of the fund created by subscription of stock, but relied upon the mortgage given by the company on its whole

road to secure the payment of its bonds; that plaintiffs are not within the equitable principle which might be invoked by the other class of creditors, and that therefore, as between the county and the company, Morgan county does not owe the Ill. R. R. Co. anything; the plaintiffs are in no better position than would be the Ill. R. R. Co. if it had claimed the bonds in controversy, and complainants' bill should be dismissed.

1. The Morgan county bonds, as heretofore stated in argument, have never passed into the hands of innocent purchasers, and we are not embarrassed by any of those principles that enure to the benefit of an innocent purchaser. The rights and liabilities of Morgan county are the same as they were the day after its bonds were deposited with Messrs. Elliott & Brown.

2. As between Morgan county and the Ill. R. R. Co., Morgan county is under no obligation to pay the company any of these bonds, because the condition upon which these bonds were issued and deposited never was performed. No work was ever done in Morgan county except the surveys, which were paid for by Morgan county. The fact that the Ill. R. R. Co., by its president, R. S. Thomas, did agree that the bonds deposited with Elliott & Brown should be paid out for work in Morgan county, is proven. That the Ill. R. R. Co. and its president were bound by that agreement, is, in substance, conceded in the opinion pronounced by Jndge Lawrence in the case of R. S. Thomas et al. vs. Morgan county, reported in the 39th Vol. of Ill. Reports, p. 466; and while the Supreme Court held that creditors of the Ill. R. R. Co. who, without any knowledge or notice as to how the rights of Morgan county were, as between it and the Ill. R. R. Co., looked to the subscriptions of stockholders for payment, were entitled to be paid out of the Morgan county bonds, the company were not entitled to any of the bonds unless work was done in Morgan county. If it be suggested that the vote of Morgan county was for an unqualified subscription, and that the order of the County Court di-

recting a vote did not contain the condition referred to, and that there was therefore no authority for making any such condition, we reply that the Supreme Court of Illinois has, in giving a construction to the law of 1854 (authorizing corporate authorities to pay its subscription at once, and not by installments, as calls were made), held in several cases that corporate authorities, for the protection of the municipal corporations they represent, have a right to modify the terms of subscription, although, in the order for the vote, no condition is mentioned.

People vs. County of Tazewell, 22 Ill., pp. 154, 155.

People vs. Dutcher, 56 Ill., p. 149.

3. Again, confining the discussion still to the question of the obligation of Morgan county to pay out these bonds, *as between itself and the Ill. R. R. Co.*, and not considering the right of any class of creditors of the Ill. R. R. Co. to look to the bonds in controversy for payment, we claim that Morgan county is under no legal or equitable obligation to pay out these bonds in liquidation of its subscription, because the Ill. R. R. Co. has never built and completed its road; has never built any part of the road in which Morgan county was interested, and the building of which induced the subscription; has sold that part of the road that was built, become insolvent, and by disuser has forfeited its charter, and the time within which, by the terms of its charter, it had any power or right to build the railroad, expired in February, 1863, and never was, by law, extended.

4. Independent of the Statue of the state of Illinois in regard to negotiable instrument, the right of creditors of the Ill. R.R.Co., material, men, or laborers, who furnished materials or labor for building the road, are quite different from the rights of the Ill. R. R. Co. The general principle is fairly stated in the opinion of the United States Court in the case of Mumma vs. The Potomac Company, reported in 8th Peters, p. 281, cited 2d. Story's Eq., Jur.. section 1252.

The property of corporation is held in trust for the creditors, and may be pursued by them into whosesoever hands it may come, as well after as before the dissolution of the corporation, *unless it may have come to the hands of a bona fide purchaser.*

In the case above referred to, R. S. Thomas et al. vs. Morgan county et al., 39 Ill., p. 495, it was held that creditors of the Ill. R. R. Co., who had furnished work or labor on the justifiable expectation that they were to be paid out of the fund created by subscriptions of stock, had a right to be paid out of that fund, no matter how the case stood as between the subscriber and the company; and in the case of Morgan county vs. the P., P. & J. R. Co. et al., 76 Ill., p. 120, the Supreme Court of Illinois has approved the same doctrine, irrespective of the question of knowledge or notice as to how the matter stood between the subscriber and the company. But this is held really only as to that class of creditors who did look, or are presumed to have looked, to subscriptions for payment, because no other class of creditors was before the Court in the cases referred to, and is based upon the case and facts and points as then presented to the Court.

5. The plaintiffs, however, are not of that class of creditors who would not be bound by the agreement made by the Ill. R. R. Co. The purchasers of the bonds of the company never did look to subscription for stock as the fund to which they might resort for the payment of the railroad company's bonds. What is the reason why creditors of the Ill. R. R. Co. had a right to look to this subscription of Morgan county for payment? Is it not because they gave credit to the company only by reason of this fund, and because such creditors had a right to expect that this fund would not be released or diverted, and so deprive them of the right of resorting to it for payment?

6. The plaintiffs are not within the reason of this equitable principle. The bonds of the Ill. R. R. Co. were not issued until a year or more after

the stipulation that the Morgan county bonds should only be used for work done in Morgan county was made. The mortgage to secure the bonds is dated 1st November, A. D., 1858. The purchasers of the company's bonds looked alone to this mortgage for their payment of the bonds. The reason ceasing, the equitable rule ceases to have any application. These plaintiffs are not in a position to say, "the company's bonds were bought on the expectation that they were in any part to be paid out of subscriptions for stock." Such a statement would be a pretense. The plaintiffs are creditors of the Ill. R. R. Co., but they are not of that class of creditors who looked to the subscriptions for payment.

7. If Morgan county owed the Ill. R. R. Co. anything as between the county and the company, it is admitted that the plaintiffs could reach it, and subject it to the payment of their claims, but as the county owes the Ill. R. R. Co. nothing as between it and the company, the position of the plaintiffs is no better than that of the company.

8. The claim of the plaintiffs, as it seems to us, has in it no element that appeals to our sense of what is just and equitable and of good conscience. The county of Morgan subscribed $50,000 to secure the building of the Ill. R.R. to Jacksonville, and provided, so far as an agreement with the railroad company could accomplish it, that the subscription should not be paid unless the road was built to Jacksonville. The road was not built to Jacksonville. The plaintiffs bought in all the bonds of the Ill. R. R. Co. for $200,000. By virtue of these bonds, and the mortgage given to secure them, they obtained the railroad from Pekin to Virginia, some forty miles, more or less, in length, its appurtenances and equipment, worth, presumably, $800,000. The city of Jacksonville, part of the same county of Morgan, on the belief induced by Mr. Allen and his counsel that the bonds in controversy could not be used, subscribed and paid $50,000 to secure the building of the same railroad from Virginia to Jacksonville. Twenty thousand dollars of these bonds in controversy were obtained in a questionable way by these plain-

tiffs, or by Mr. Allen, for the use of these plaintiffs. These bonds have been ordered to be restored by the courts, on the ground that they were not legally obtained, and this suit is brought to obtain not only the forty bonds so ordered to be restored, but a much larger sum, from the county of Morgan. We claim that the equitable principle, which we have above discussed, and which the plaintiffs rely upon, has no application to the class of creditors of the Ill. R. R. Co. to which the plaintiffs belong, and that it would be inequitable and unjust to sustain the plaintiffs' claim.

VII.

The subscription of Morgan county to the capital stock of the Ill. R. R. Co., and the bonds deposited with Messrs. Elliott & Brown, have been the subject matter of litigation in three suits, which, within the last ten years, have been taken to the Supreme Court of Illinois.

R. S. Thomas et al. vs. Morgan county et al., 39 Ill., 496.

Wm. Thomas vs. Morgan county et al., 59 Ill., 479.

Morgan county vs. P., P. & J. R. Co., 76 Ill., 120.

In these cases the facts presented differed, and the points of defense made were not exactly the same, and the opinions in the above cases, upon some minor points, are not entirely consistent. This Court would not necessarily be bound by the opinions referred to further than the reasons given were convincing; yet it so happens that the material points presented in this brief are not inconsistent with anything really decided by the Supreme Court of Illinois in these three cases.

The only point really decided that is of interest in this case was, that, upon the case as then presented, the class of creditors of the Ill. R. R. Co., to which Vail and Ladd and Wm. Thomas and similar creditors belonged, were entitled to be paid out of the bonds of Morgan county.

The questions raised in this case, as we understand it, are questions

that did not arise, and were not decided, in any of the three cases above mentioned. No question of the legality of the subscription, the vote of the county, the constitutionality of the legalizing act, the consideration of the subscriptions and bonds, the estoppel, the peculiar character of the claimants—in short, none of the leading questions here raised were cited. Therefore those cases are not authority further than their reasoning is applicable to the points here.

Meyer vs. Ehrhardt, 88 Ill., 457.

Cohen vs. Virginia, 6 Wheat. 399.

VIII.

The claim of appellees in this case is res judicata. The judgment under which appellees claim is in the name of Studwell, Hopkins & Cobb, trustees, vs. the Illinois River Railroad Company. They were made defendants to the suit brought by Elliott & Brown vs. the County of Morgan et al., in the Morgan Circuit Court, in the year 1863, and their right to the Morgan county bonds now in controversy was decided against them. Appellees are also barred by the suit of Studwell, Hopkins & Cobb, trustees, in the United States Court for the Southern District of Illinois, in the year 1867, vs. the County of Morgan, by a bill filed in equity, as in this case, asserting claim to said Morgan county bonds. Said suit was dismissed, on the filing of the answer of Morgan county, that all of said bonds had been decreed to the creditors of the Ill. R. R. Co. Appellees are also estopped by the stipulation of said trustees—transcript, p. 217—and by the stipulation of R. S. Thomas with the County Court of Morgan county—39 Ill., 496.

Appellees are seeking a recovery in this case against the county of of Morgan, upon a judgment, in the name of Studwell, Hopkins & Cobb, trustees, vs. the Ill. R. R. Co.

This whole matter has been adjudicated. Studwell, Hopkins & Cobb,

trustees, for the bondholders, these appellees, were first made parties to the suit of Elliott & Brown vs. the county of Morgan et al. on the 21st of February, 1863, in the Morgan Circuit Court. Studwell, Hopkins & Cobb, trustees, at the September term, 1863, filed their answer; see page of transcript 211. This suit was brought to settle the right of the various claimants to said Morgan county bonds.

An interlocutory order was entered, directing that said county bonds should be placed in the hands of M. P. Ayers & Co., as custodians, to await the further order of the Court. They had been previously held by Elliott & Brown as depositaries. The several claimants were decreed to interplead, their several answers standing as cross-bills, with leave to file new cross-bills, and that all of said claimants be enjoined from prosecuting or instituting suits against Elliott & Brown.

At the September term, 1864, the claimants filed their cross-bills, and the case was heard at the September term, 1865, upon the pleadings, stipulations, proofs, exhibits, etc. A final decree was made dismissing the bills of all the claimants to said bonds—of whom were Studwell, Hopkins & Cobb, trustees, defendants—and directing that the bonds remain with M. P. Ayers & Co. All the parties prayed an appeal to the Supreme Court except the county of Morgan. Studwell, Hopkins & Cobb failed to assign errors, and the decree of the Circuit Court was affirmed as to them.

Thomas vs. the County of Morgan et al., 39 Ill., 496.

The decisions of all the Courts are the same upon this point. When the rights of parties have been once adjudicated in a Court having jurisdiction, they cannot be again litigated in the same or other Courts.

Wright vs. Dunning, 46 Ill., 271.

A decree in equity upon the same points between the same parties, where the matters in controversy were specially determined, is good as a

plea in bar, and, when given in evidence, constitutes an estoppel in a subsequent suit.

Lloyd vs. Lee, 45 Ill.

A former adjudication of the matters in controversy is conclusive between the same parties, in a subsequent proceeding upon the same matter, not only as to what was actually determined, but as to every other thing, there with the knowledge of the complainants, which might then have been set up as a ground for relief and litigated in the first suit.

Hamilton vs. Quimby, 46 Ill., p. 90.

I lay it down as a general rule that wherever a matter comes to be tried in a collateral way, the decree or judgment shall be received as conclusive evidence of the matter so determined.

Bigelow on Estoppel, 146.

But to give full effect to the principle by which parties are held bound by a judgment, *all persons who are represented by the parties, and claim under them, or in privity with them, are equally concluded* by the same proceedings.

Greenleaf (11th Ed.), p. 693, sec. 523.

The general doctrine being this, *that the person who represents another, and the person who is represented*, have a legal identity, so that whatever binds the one in relation to the subject of their common interest, binds the other also.

Same, sec. 536.

If the entire subject of the present controversy was embraced in it, it is sufficient; it is *res judicata*.

Note to p. 705, Greenleaf.

There is no authority in conflict with this. The case of Kerrison,

assignee, vs. Stewart et al., United States Rep., 93, p. 155, does not decide anything in conflict with the general principles above set forth, but, on the contrary, sustains the position fully, as laid down by the authorities cited.

We do not think it necessary to make reference to the suit brought by Studwell, Hopkins & Cobb, trustees, in the United States Circuit Court for the Southern District of Illinois, at the January term, 1867, against the county of Morgan et al., to recover the remainder of the bonds of said county that had not been paid out under the decree in the case of Thomas vs. Morgan county, decided in 39 Ill. The answer of Morgan county was filed in said suit, and sworn to. It was prepared by I. L. Morrison, party to this record and attorney for appellees. That answer disclosed that all of the bonds of the county of Morgan had been decreed to the creditors of the Ill. R. R. Co.; (see transcript, pp. 123 and 98, answer 6.) This suit, Mr. Morrison says, was to reach the Ill. R. R. bonds, on the ground that they were judgment creditors of the Ill. R. R. Co. The answer of said Morgan county in that case does not appear in the transcript, but it was referred to in the Court below, and was made an exhibit.

Mr. Morrison admits that he filed the answer as the *then* attorney for said county. It was sworn to. The question was then settled that these appellees, as *judgment creditors* of the *Ill. R. R. Co.*, had no right to said bonds, or they would not have dismissed their bill. Appellees are asserting the same right to these bonds in this case—now, as individuals—before, by Studwell, Hopkins & Cobb, trustees. It was a bill in equity, just as this is, and for the identical purpose of reaching these same bonds.

We also insist that appellees are estopped by the stipulation of Studwell and Hopkins, trustees. It is admitted, in the suit of Thomas vs. the county of Morgan, that these appellees, then owners of the P., P. and J. R. R. Co., in order to secure the passage of this act of June 11, 1863, and

while suits were pending in the Circuit Court to subject these bonds to the claims of creditors then suing, entered into, and signed, this stipulation; (transcript, p. 217.)

"The undersigned, trustees in the first mortgage of the Illinois River "Railroad Company, being desirous to obtain a charter for incorporating "the purchasers of said railroad, do hereby stipulate that nothing in the "act of incorporation which may be passed by the legislature, shall in any "way affect the title or right of the trustees or bondholders, or any cred-"itors of said road, or any person having claims or rights to the whole or "any part of $50,000 of Morgan county bonds, and now in litigation in the "Circuit Court of Morgan county; but the right and title to said bonds "shall be left to be decided in the suit now pending in the Morgan county "Circuit Court." This bears date June 5th, 1863. The suit then pending was the case decided in 39 Ill., which was adverse to them. It was also held, in 59 Ill., that said Peoria, Pekin & Jacksonville Railroad asserted no claim to said Morgan county bonds, but abided the stipulation. The point we make is this: If it was a bar as against the Peoria, Pekin & Jacksonville Railroad Company, owned by these appellees at that time, why is it not a bar to these appellees, claiming for the second time these bonds as judgment creditors of the Ill. R. R. Co.?

These appellees had notice of the condition upon which the bonds of Morgan county were issued and placed in the hands of depositaries, Elliott & Brown, only to be paid out for work and labor performed upon said road within the limits of the county of Morgan. (See answer of Studwell, Hopkins & Cobb, trustees, transcript, p. 211). We quote from said answer, filed September term, 1863, in the Morgan Circuit Court; Elliott & Brown vs. Morgan county, Ill. R. R. Company, Studwell, Hopkins & Cobb, trustees, et al.: "At or before the time of issuing said bonds, "it was agreed and stipulated between said county of Morgan and said "railroad company that said bonds were to be used by said company in

"constructing said road between Virginia, in Cass county, and Jackson-
"ville, in Morgan county, and said Elliott & Brown were to deliver said
"bonds to said company as the same might be needed for that purpose."
Also, "that said Morgan county bonds should be used in the construc-
"tion of the road between Virginia and Jacksonville, aforesaid, and not
"otherwise; *and but for which contract said bonds would never have been*
"*issued.*"

They pray in their answer, "that these bonds may be decreed to
"them to be held and used by them, or by the railroad company recently
"chartered, to and for the purpose of constructing said railroad between
"Virginia and Jacksonville, aforesaid, *in accordance with the contract made*
"*between the old company and the county of Morgan.*" The Supreme Court, in 39 Ill., Thomas vs. the county of Morgan, decided upon this contract with the "old company and the county of Morgan." The trustees of these appellees admit the sufficiency of that contract, and say, "*but for*
"*which said bonds would not have been issued.*" They had *notice* of the *condition upon which the bonds were issued*, and are now estopped. Their rights were adjudicated in that suit, "creditors with notice are bound by
"the condition upon which the bonds were issued."

The case of Morgan county et al. vs. Thomas et al., 79 Ill., is not, upon this point, in conflict with decisions referred to in 39 Ill. Thomas, the president of the Ill. R. R., might, however, bind himself to treat the subscription as conditional, *and so might other creditors.* The answer of Studwell, Hopkins & Cobb, above referred to, shows that it was so treated by them, and the agreement of Thomas with the county was ratified and approved by them, "*but for which contract these bonds would never have been issued.*" Upon the facts as disclosed by this record we are warranted in saying that this suit is *res judicata.* It comes clearly within the rule, and this decree should be reversed and the suit dismissed.

IX.

These complainants are estopped by the decree in the "Vail and Ladd" case.

The rights of these complainants as creditors of the Ill. R. R. Co. was urged by the bill of inter pleader of Studwell, Hopkins & Cobb. trustees of the holders of the mortgage bonds owned then and now by these complainants, and had a decree been rendered in accordance with the prayer of said bill, the decree would have been for the benefit of the holders of the bonds, *cestius qui trust* of Studwell, Hopkins & Cobb, complainants in that bill. The rights of these complainants were in no way different then than they are now. No new fact is alleged or proved that was not or might not have been urged then. The decree on which complainants in this case base their allegation that they are creditors of the Ill. R. R. Co. is a decree rendered in favor of Studwell, Hopkins & Cobb, who, as trustees, are complainants in the foreclosure of the Ill. R. R. Co.'s assets. This foreclosure was for the benefit of whoever owned the bonds. The record shows that these complainants at the time that bill was filed were the holders of all of said bonds, and in their bill in this case they allege that they are the owners of the bonds and are entitled to the benefit of said decree, and they offer all the bonds in evidence in this case. The doctrine of "*res adjudicata*" is that, where the cause of action is the same, parties and privies are estopped by the former recovery to re-litigate a cause of action once adjudicated. Aurora City vs. West, 7 Wal., 100, and cases cited. See also dissenting opinion. Neil vs. National Bank, 97 U. S., 452. In this case, by bill, Neil had prayed that a sale, not including machinery and water power, be set aside, and the Court so decreed. The bank afterwards, by bill, foreclosed notes on the premises, and Neil assigns for error that this decree does sell machinery and water power. This Court held that he was estopped; that that was *res adjudicata* in the former suit.

Campbell vs. Rankin, 99 U. S., 261.

Story Eq., sec. 1520.

Bigelow on Estop., 812–815.

Stockton vs. Ford, 18 How., U. S., 418.

"But this question was properly involved in the former case, and might have been then raised and determined. The neglect of the plaintiff to avail himself of it, even if it were tenable, furnished no reason for another litigation. The right of the respective parties to the judicial mortgage was the main question in the former suit. That issue of course involved the whole or any partial interest in the mortgage. We are satisfied, therefore, that the former suit constituted a complete bar to the present."

Kelly vs. Doulin, 70 Ill., 378.

Rogers vs. Higgins, 57 Ill., 244.

Dickson vs. Todd, 27 Ill., 504.

H. and W. notes to Duchess of Kingston's case, 2, Smith's Leading Cases, 430.

Greenleaf Ev., sec. 535.

Thompson vs. Roberts, 24 How., 233.

Bigelow on Estoppel, 46 note.

Kerrison, Assignee, vs. Stewart, 93 U. S., 155.

It is useless to cite authorities further on a point settled.

"The term "*privity*" (Prof. Greenleaf, Ev., sec, 189) denotes mutual or successive relationship to the same rights of property." The relation of trustee and *cestui qui trust* exists between Studwell, Hopkins & Cobb, and Allen, Arnold and Trowbridge. The latter derive all their right and interest by and through the former. The former hold the legal title, the

latter the equitable title. *Pro hac vice*; they are one. The act of one is the act of the other; the right of one is the right of the other. The former are plaintiffs in the first suit set out in this bill; the judgment is for the use of the latter; Kerrison vs. Stewart, *supra*. Every element in the definition of an estoppel by the record appears against the claim of complainants to any interest in the bonds described. A Court of competent jurisdiction; the Circuit Court of Illinois, a Court of general law and equity jurisdiction; the same subject matter, viz: the bonds described in the bill in this case, was contended for; the same right was asserted, viz: a right as creditors of the Ill. R. R. Co.; same parties, viz: the complainants by and in the name of their trustees. The Court decided against the claim and dismissed the bill. The case was appealed by the parties. Complainants by themselves, or in the name of their trustees, (Kerrison vs. Stewart, *supra*,) could have assigned errors on the record in the Supreme Court of Illinois, and did not. They could have prosecuted a writ of error to that Court, and they have not; and the five years' limitation has long since run against such writ. So long have they rested. But when cast in that proceeding the same parties by another name bring this suit. A stronger case will never be found to which to apply the maxim—*Nemo debit bis vexari pro una et eadum causa.*

X.

These complainants are estopped by the stipulation of Studwell and Hopkins, two of their trustees.

At the time this stipulation was made, a bill to foreclose the mortgage by the Ill. R. R. Co. had been filed by said trustees, on behalf of the bondholders, who were these complainants, in the United States Circuit Court for the Southern District of Illinois. The Court was then in session, and the case was ready for a decree. The "Elliott & Brown" suit was then pending, and the trustees' bill of interpleader, claiming these

bonds as creditors of the Ill. R. R. Co. for these complainants, had been filed in that case, and was ready for adjudication in due course of procedure. To prepare for the prospective foreclosure and sale of the assets of the Ill. R. R. Co., the trustees were desirous of an act creating a corporation to which the purchasers could convey the assets sold. It is easy for the imagination to fill a gap. A bill had been introduced in the general assembly of Illinois. There was a special session in June, 1863. This bill had got into a legislative committee, and probably into the pocket of the "member from Morgan," who stubbornly refused to permit the bill to be reported, and he appears to have been so strong in his position that he could make an ultimatum that the trustees, on behalf of these complainants, should leave to be decided by the Circuit Court in the Elliott & Brown case, then pending, their claim to these Morgan county bonds, as a condition precedent to their grant of a charter. The stipulation was executed, and all anxiety was at once dispelled, and the proposed law must have been clear sailing; for, in six days, the act became a law by the approval of the governor. The decree of foreclosure was at once rendered. All these events occurred in such close proximity of time as to leave no other conclusion than that the act could never have been obtained—as, as a matter of fact, it was not obtained—except in consideration of the above stipulation. *These complainants* accepted that charter, and conveyed the property purchased at the foreclosure sale to the corporation created by the act. Appellees have received, and are enjoying, the consideration for the stipulation made by their trustees, and now, to say that they are not bound by it, is to destroy all faith that may be given to the most solemn obligations that men make. Whatever opposition there was to the act of incorporation was at once withdrawn, and apparently in consideration of this stipulation. The Circuit Court decided, in that case, that the bondholders, these complainants, had no right, title, interest or claim in and to the said Morgan county bonds, as creditors of the Ill. R. R. Co. Having so agreed, for an executed consideration, to abide that decision—whatever

may have been their rights before that—they are forever barred from urging any claim in these bonds. By this stipulation, all inducement to oppose the act of incorporation was taken away. It was a valid, binding contract, which has been executed, and complainants enjoyed the franchise granted, and, by this act, they are estopped. It is a complete estoppel *in pais.*

Bigelow on Estoppels, pp. 480 and 370.

Hare and Wallace Notes to Duchess of Kingston's case, 2 S'miths L. Cases.

The Supreme Court of Illinois, the first time litigation with reference to these bonds was before it, held that R. S. Thomas was barred from all claim to these bonds by his agreement that the bonds should be expended only for work done in Morgan county; that by his agreement he was estopped.

R. S. Thomas vs. Morgan County, 39 Ill., 496.

The same principle that estopped him then, estops these complainants, by this stipulation, now. The decree in this case finds (p. 85) that complainants are the equitabe owners of the judgment against the Ill. R. R. Co. in favor of Studwell, Hopkins & Cobb, as trustees; that is, that the judgment is to their use. The identity of the parties is therefore established. An estoppel against S., H. & C. is good against complainants. They are privies, and more. They are the actual parties to the suit.

"If the creditors * * are less satisfied with the manner in which he (the trustee) represents them in suits that are pending, they may, under proper circumstances, intervene, and ask to be made parties, so as to speak for themselves; but their adversary need not go after them, except under the direction of the Court. * * * The trustee is himself the chosen representative of all, and whatever binds him must bind them."

Kerrison, Assignee, vs. Stewart, *supra.*

Quoting again from the same case:

"In such cases, the trustee is in Court for, and on behalf of, the beneficiaries; and they, though not parties, are bound by the judgment, unless it is impeached for fraud, or collusion between him and the adverse party. The principle which underlies this rule has *always been applied in proceedings relating to railroad mortgages*, where the trustee holds the security for the benefit of bondholders. It is not, as seems to be supposed by the counsel for appellants, a new principle developed by the necessities of that class of cases, but an old one, long in use under analogous circumstances, and found to be well adapted to the protection of the rights of those interested in such securities, without subjecting litigants to unnecessary inconvenience."

It is idle to say that the rights of these bondholders have changed by the judgment sued on. They were creditors before judgment as well as after judgment. They obtain this judgment in the name of the trustees. In the name of the trustees, they interplead, in the "Vail and Ladd" case, as creditors of the Ill. R. R. Co. The fact that they now sue in their own name, claiming that the judgment in the name of the trustees is to their use, cannot change the legal or equitable relation of the parties. They are privies, or parties, all the time. The authority above quoted seems to be conclusive of this case, and, as in that case, should end the discussion without going into other questions raised.

XI.

We insist that the 14th error is well taken: That the $50,000 in bonds of the city of Jacksonville—delivered to John Allen, appellee in this case, for himself and co-appellees, owners of the Peoria, Pekin and Jacksonville Railroad Company—was in lieu of the $50,000 conditionally subscribed by the county of Morgan to the Illinois River Railroad Company.

The subtlety displayed by the appellees in this case, in the litigation

for the recovery of the Morgan county bonds, and by their agents and trustees, Studwell, Hopkins & Cobb, is remarkable in the history of equity jurispudrence. After being defeated in the various suits which we have before referred to, we now find appellee Allen before the authorities of the city of Jacksonville, threatening to divert the road from said place if said authorities did not make a subscription of $50,000 for the purpose of completing the road between Virginia and Jacksonville, the latter place being in Morgan county. A meeting of the citizens was had, and a committee was appointed. (See transcript, 134.) The question was, had the county any of the bonds originally and conditionally subscribed to the old company, Ill. R. R.? Mr. Morrison was waited upon by Mr. Reynolds, who was appointed for that purpose by the citizens' committee. Mr. Morrison wants time to investigate the matter, although acting as the attorney for said county in all the litigation with reference to said bonds. Mr. Reynolds is informed by Mr. Morrison that none of said bonds could be used. Upon this understanding, and this alone, the city subscribed the $50,000. Not one dollar would have been subscribed had it not been upon this understanding. Mr. Allen received $50,000 in bonds of the city of Jacksonville, being the original consideration of the county to the Ill. R. R. Co. In addition to this amount, we again find appellee Allen—acting for himself and his co-appellees, with Morrison, party to this record, and who states that he, too, is pecuniarily interested in this decree—before the County Court in the year 1868. They succeed in getting $20,000 additional of old bonds, which should have been destroyed, as they had been bought up from the creditors of the Ill. R. R. Allen and Morrison divide said bonds equally. They are subsequently, by the decree of the Circuit Court of Morgan county, ordered to return said bonds to the custody of the county. This has not been done, in accordance with the terms of said decree.

Mark their implacable zeal. Suit is instituted to recover said bonds

as judgment creditors. As their judgment cost them nothing, and, by the sale of the Ill. R. R., they made double the amount of the cost of their bonds, and got possession of said Ill. R. R.—presumably worth $1,000,000, as a recent sale proves—$50,000 from the city of Jacksonville, besides subscriptions in all the counties through which said road passed, and we find them resorting to a Court of Equity to enforce a claim which never should have been exhibited in a Court of Equity, as it has no element that appeals to our sense of what is just and equitable, and, of good conscience. We insist that in the light of this record this 14th error is well taken, and should be so held by the Court, and this decree reversed and the bill dismissed.

The 8th, 9th and 15th errors assigned by appellant are so manifest that we deem it unnecessary to do more than to call the attention of the Court to them. A. L. Knapp, special master, "states (transcript, 88) that the solicitors for Morgan county claimed that under the settlement and payment, in June, 1866, of the Vail and Ladd judgment, and in accordance with the order and decree of the Circuit Court, there were then retired and paid of said bonds the sum of $17,500, the validity of which claim he does not pass upon, as he considers that, under the third direction of the decree herein, *the same is excluded from his consideration*, and, in computing the amounts due on these bonds, he has treated the said bonds as *still existing obligations against the county of Morgan*."

The county acted under the express order of the Supreme Court of the state of Illinois, and retired $17,500 of Morgan county bonds.

The Supreme Court say, Thomas vs. Morgan county, 39 Ill., 496:

"A decree should have been entered in their favor (Vail and Ladd), directing the delivery to each of them of an amount of bonds equal in market value to the sums respectively due them on their judgments."

This order was filed in the Morgan Circuit Court May 28th, 1866. The decree of the Morgan Circuit Court is as follows upon this point:

"And this cause coming to be heard upon the question of the marketable value of said bonds, referred to in said opinion of the said Supreme Court, and in this case, and the Court, having heard the evidence of witnesses taken in open Court, find from the same that the marketable value of the same is 40 cents to the dollar." (Transcript, 62.)

Under that decree, $17,500 was retired in strict conformity to the decree of the Supreme Court, and the master, A. L. Knapp, *treats them as still subsisting obligations* against the county of Morgan. Now, should the Court review this decree, the record fully sustains and confirms it. Judge Wm. Thomas, whose opportunities were better than any other witness—as he was a director of the Ill. R. R. Co., and interested in the Morgan county bonds—states (transcript, p. 122) that he bought $4,000, at 50 cents on the dollar; but, after the decision in 39 Ill., *supra*, he thinks they could not have been sold for anything like that sum. These bonds were 6 per cent. bonds. They had 11 years to run before maturity. Money was worth 10 per cent., as that was the legal rate of interest. (Transcript, 127.) This would make the bonds worth about 60 cents, or the difference alone between 6 per cent. and 10 per cent. for 11 years' investment, to say nothing about the cloud upon the title, as the condition upon which they had been issued had never been complied with. Under this and the Blair decree, all the bonds of the county of Morgan which had been decreed to the creditors, and bought in by the county, *were treated as matured obligations, and worth par*, and the county held, under the decree appealed from in this case, chargeable for the *par* value of all of said county bonds, and interest upon *interest* coupons, and *interest upon that again!*

The Supreme Court of Illinois has uniformly held that interest upon the interest coupons could not be recovered. It was so decided upon these identical bonds, in

76 Ill., Morgan County et al. vs. Thomas et al.

City of Pekin vs. Reynolds, 31 Ill., 529.

Madison County vs. Bartlett, 1 Scam., Ill., 67.

Johnson vs. Stark County, 24 Ill., 75.

People ex rel. vs. Tazewell County, 22 Ill., 147.

At the common law, interest was allowed in no case. It is the creature of the statute alone, and to it we must look for authority for its allowance.

Jacob Law Dec., 373.

There is no statute of Illinois authorizing it. It is true that Courts have held differently from the decisions of our State Courts upon this question. *That was when bonds had been placed upon the market and sold.* This is not the case with these Morgan county bonds. They have been held, under the decrees of the Courts, in the hands of depositaries. Appellees are not innocent purchasers. And as the judgment under which appellees claim cost them nothing, we not only fail to discover the equity of their bill, but the law that would authorize, upon the state of facts disclosed in this record, interest upon interest compounded.

XII.

Complainants are not in a position to seek equitable relief.

Written over the portals that open into every Court of Equity, in large letters and plain words that whosoever knocks may read and undersand, is the maxim—"Who seeks Equity must do Equity." With clean hands must all enter that solemn tribunal.

It appears that shortly after Allen, Arnold and Trowbridge, these complainants, became the purchasers of the Ill. R. R. and its assets at the foreclosure sale in April, 1864, a transfer was made to the P., P. & J. R.

Co. The act incorporating this company had been procured by Studwell and Hopkins, the trustees of the bondholders, and Allen, Arnold and Trowbridge were the holders of all the bonds. This act was procured before said sale and preparatory thereto. The bonds were then all owned by these complainants, and they do yet, as they offered them all in evidence in this case and claimed to own them all. The P., P. & J. R. Co. is a corporation owned by Allen, Arnold and Trowbridge, these complainants. Though one be corporate and the other incorporate, they are the same identity. Allen, one of these complainants, has all the time been the president of the corporation, and he appears wherever in this record that company or these complainants act. He is Harlequin, in different guises, but the same character all through the play. It seems that when his company was organized he at once commenced negotiations for subsidies to build his road from Virginia to Jacksonville. He threatened to run his road off to another terminus. The citizens of Jacksonville were appealed to. A citizens' committe waited on him and he finally agreed to build his road to Jacksonville for $50,000 of city bonds. Somewhere about this time it is evident a conspiracy was formed between him and I. L. Morrison, one of the respondents in this case. They agreed, as they both admit, that Morrison was to get all the Morgan county bonds, then in possession of the county by virtue of the Blair decree, he could, and they would divide equally between them what could be got. Morrison had been the attorney for the county all through the Morgan county bond litigation, and was evidently supposed to be in a position to carry out this purpose. There was some doubt as to whether the people of the city would vote the city bonds, and the citizens' committee thought of these bonds as perhaps available if the vote failed and sought the legal opinion of I. L. Morrison, one of the respondents in this case, whether they could be so used. His relation to the county as its attorney in this bond litigation invited this inquiry of him, and he answered "no." The city bonds were voted and paid, and Allen got the money for the benefit

of these complainants, and the road was built to Jacksonville. In that transaction these complainants were called The P., P. & J. R. Co. There is no evidence that anybody beside these complainants has ever owned a dollar of the stock of that company. The evidence shows positively that they owned it all at first. It then turned out that 40 bonds of the county had been delivered to I. L. Morrison, one of the respondents in this case, to be by him delivered to the P., P. & J. R. Co. on the completion of the road, and that he had delivered said bonds to said company. It appears that at this time H. G. Whitlock was the county Judge. He had appeared as one of the attorneys of the county in the "Blair" case. He has been ever since this transaction the law partner of I. L. Morrison. The County Court of Illinois is composed of one county Judge and two associates. No entry was made on the records of the Court of the delivery of the bonds to Morrison to be by him delivered to the P., P. & J. R. Co. when the road should be completed to Jacksonville. Indeed, no entry whatever was made by direction of the county Judge. This would have been notice to the world of the transaction. Such notice might have invited legal proceedings; for instance, an injunction. It might have defeated the city vote of $50,000. Whatever the motive, the transaction was kept a profound secret until the bonds had been delivered to the railroad company, and, as was no doubt supposed, out of the reach of legal process.

After this transaction Mr. Morrison, one of the respondents in this case, appeared as the attorney for the county in the suit of Wm. Thomas against the county. He demurred to Thomas's bill, by which the facts alleged in the bill were admitted. He also appeared in the Supreme Court of Illinois in that case for the county. The opinion of the Court in that case appears in 59 Ill., 479, and the Court say at the very outset of their opinion: "The prominent facts of this case, as we gather them from the *statement and brief of appellants*, and not controverted by appellee, are substantially as follows." So it appears conclusively that Mr. Morrison, one of the respondents in this case, is continued as the attorney for the county

as late as January, 1871, and long after this conspiracy with Allen was made and consummated. It is a fair inference that he permitted the Supreme Court of Illinois to be misled as to leading and prominent facts in that case by allowing the statement and brief of appellant to go uncontradicted by himself as the attorney of the county. By this course the Court were led to conclude as a matter of fact that the P., P. & J Co. was the legal successor of the Ill. R. R. Co., and that company having built the road to Jacksonville, the condition of the deposit of the bonds had been fulfilled. Such a conclusion lets Thomas's claim in, but while it does that, the same reasoning would legalize the delivery of the bonds to Morrison and Allen. This opinion is now urged and confidently relied upon as authority in this case. We insist that it is based upon falsehood; is a fraud upon the Court, and the opinion, so far as it is based upon such false assumptions, is of no authority whatever. That Court repudiated the whole doctrine of that case in 76 Ill., and allow the claim of Thomas on other grounds, but hold squarely that the assumption, upon which they based their decision in 59 Ill. was untrue. Morgan county sued the P., P. & J, R. Co. and Morrison, one of the respondents in this case, charging that the Morgan county bonds delivered to Morrison, one of the respondents in this case, and the P., P. & J. Co. were fraudulently delivered. The Court found the truth of this fraudulent conspiracy, and ordered the bonds to be returned to the county, and the Supreme Court of Illinois affirmed the decree; and it seemed that the whole scheme was frustrated.

Not so; the name P., P. & J. R. R. Co. is now dropped. Harlequin appears again with different bells. The old judgment in favor of Studwell, Hopkins & Cobb, for over $1,000,000, against the Ill. R. R. Co., had slept from the fall of 1863. It is now dug up. Allen appears *in propria personæ*. He says that himself, Arnold and Trowbridge had always been the owners of the Ill. R. R. bonds, and that said judgment is to their use, and this suit is brought. The Courts of Illinois have become familiar

with this conspiracy. They enter another tribunal, and sue Morgan county and I. L. Morrison.

Now we urge that this record bears out the charge that this case is a part of a conspiracy to defraud Morgan county. That it was formed years ago, and has been industriously and persistently pursued ever since. This is an attempt to prostitute this tribunal to aid that conspiracy. The bill in this case ought, therefore, to be dismissed, and these complinaants driven from a tribunal they are unworthy to approach, upon the principle that they come not with clean hands.

BROWN, KIRBY & RUSSELL,
WM. H. BARNES,
WM. M. & J. T. SPRINGER,
Solicitors for Morgan County.

OFFICE SUPREME COURT U. S.
FILED
NOV 4 1880
JAMES H. MCKENNEY, Clerk.

IN THE SUPREME COURT

OF THE

UNITED STATES.

IN EQUITY.

BRIEF AND ARGUMENT

BY

DEARBORN & CAMPBELL,

FOR

JOHN ALLEN, ET. AL.,

IN REPLY TO ARGUMENT ON PART OF THE COUNTY OF MORGAN.

HAVANA, ILL.
C. B. KETCHAM.
1880.

IN THE SUPREME COURT

—OF THE—

UNITED STATES.

OCTOBER TERM, A. D. 1880.

The County of Morgan,

vs *Appeal No. 78.*

John Allen, Et. Al.

and

John Allen, Et. Al.

vs *Appeal No. 293.*

The County of Morgan.

May it please the Court.

In the briefs heretofore filed in behalf of John Allen and

others, we have presented our views on most of the points presented by the representatives of the county of Morgan. We shall, therefore, very briefly refer to some questions raised.

I

The point is made that, "the consideration for the subscrip-
" tion of $50,000 to be paid in the bonds of Morgan county
" wholly failed, and to collect the amount thereof is inequita-
" ble.' " Authorities are cited to show, that, under the Statute of Illinois, the failure of consideration either total or partial, may be set up as a defense. No practicing lawyer familiar with the principles of pleading will dispute this proposition we presume, neither will any such lawyer be found who will contend that the insolvency of a corporation operates as a failure of consideration for a contract of subscription to its capital stock.

If it is a sound proposition that the insolvency of a railroad company occuring after the entering into a contract of subscription to its capital stock, constitutes either a total or partial failure of consideration for such contract, then there can be no such thing as a stock subscription contract being a part of the assets of an insolvent corporation for the discharge of its liabilities, and all the cases determined both in the State and National Courts, enforcing such contracts, must fall to the ground.

Their position would establish a principle that the insolvency of the corporation has the effect to permit a complete defense to every debtor to that corporation on a stock subscription contract.

With great respect for the gentlemen on the other side, we

contend that the position taken is unsound.

We insist that The Illinois River Railroad bonds were unconditionally delivered to the railroad company, for the following reasons among others:

1st. Because the order of the court ordered their unconditional delivery. (p. p. rec. 57, 58).

2nd. The register of bonds kept by the county shows an unconditional delivery to the railroad company. (p rec 236.)

3d. The subscription contract was unconstitutional. (p 52 and 53.)

4th. The certificate of stock was received by the county for the whole number of shares subscribed, and the county paid the interest for the years 1859 and 1860.

Dep. of Mr. Elliott, p. 106 and 107.

From these facts the title to the bonds appears to have been perfect in the rail road company without regard to the oft repeated recognition of the validity of the bonds by the county in dealing with them.

There has been no failure of consideration.

II.

The question raised as to the suppression of the testimony of Mr. Morrison, Mr. Whitlock, &c., is wholly immaterial as the case stands on record.

The motion was made to suppress page 84, but not passed upon. The case was partially heard, and the decree rendered without passing upon the motion, and we submit the decree is fully supported by the testimony aside from the testimony complained of.

1st. As to Mr. Morrison, he declined to answer the ques

tion, when the objection was made, that privileged communications were called for by the interrogatory, (p 100). The objection was not a valid one however, because it did not call for a secret or private communication of client to attorney; it sought to ascertain a fact transpiring in open court.

2nd. As to Mr. Whitlock, he was in every way competent. He was the county judge of Morgan county, and agent of the county at the time of the delivery of the $17,500 in said bonds; why he was incompetent to testify as to facts within his knowledge, we are unable to discover.

As to the disposition of the Blair case, it is wholly immaterial whether anything Mr. Whitlock said is considered or not, because the contract in writing and the deposition of Mr. Dummer, (p 123) clearly show the facts and no material error occurred for which the court would reverse, although it should be held that Mr. Whitlock's testimony was inadmissible.

3d. The testimony of Mr. McClure, page 105, is full and clear as to disposition of the $17,500 of the bonds in the case of Thomas, et. al. vs Morgan County, et. al.

4th. But aside from all this, the testimony of Mr. Trabue, deposition page 93; W. S. Hook, page 94; H. G. Whitlock, page 100; E. R. Elliott, page 106; Robert Hackenhull, page 117; F. G. Farrell, page 118; James Berdan, page 119, all concur in stating that the matured interest warrants were at all times worth their face value.

The matured coupons on the $17,500 of bonds at the date of the decree were over $6000. These coupons were not paid or taken into account.

The matured interest warrants at that time on all the bonds, amounted to more than three times the sum due on the Vail and Ladd judgments. A court of equity should have applied the matured interest to discharge the sum due from the county rather than to have cancelled the interest bearing bonds.

Then the question as to the value of the bonds not due would not have arisen. It should not have arisen.

5th. It matters not whether the depositions of William Brown and E. R. Elliott, taken in the original suit of Thomas vs Morgan county, be considered or not, because Mr. Elliott's deposition was taken in *this case* and he testified to the same facts; see page 106.

No error occurred for which this court will reverse.

III.

The position taken in article V of the brief of Morgan county, that the county was not a trustee and the subscription contract or the bonds issued in payment for the stock, does not constitute the county a trustee, nor the bonds a trust fund, has been so often overruled in this Court and in the State Courts, that it cannot now be considered an open question. We have said all we consider necessary to be said on this point in our original brief filed. We respectfully refer to the authorities there cited.

IV.

In the sixth article of the brief of Morgan county, the position is assumed that the indebtedness due from The Illinois River railroad Company to our clients, is not of such a character as to entitle its owners to resort to this fund for its liq

uidation or payment. The idea of counsel seems to be that the holder of the bonds of a corporation secured by trust deed, are restricted to the property described in the trust deed for payment, and cannot resort to the equitable assets of the corporation for payment of any balance after applying the proceeds of sale of the property conveyed in trust.

This position is in conflict with the rule established by many well considered cases, and it is believed that no well considered case will be found supporting counsel on the other side. The Supreme Court of Illinois expressly held that these bonds are liable to be applied to the payment of the general creditors of The Illinois River Railroad Company.

Morgan county et: al. vs Thomas, et. al., 76 Ill. 120, citing many authorities in support of the position, all of which are cited in our original brief, to which we refer.

Gentlemen say: "If Morgan county owed The Illinois " River Railroad company anything as between the county " and the company, it is admitted that the plaintiff's could re- " sort to it, and subject it to the payment of their claims, but " as the county owes The Illinois River Railroad Company " nothing as between it and the company, the position of the " plaintiff's is no better than that of the company." Page of " brief, 58.

This is a fatal admission: The county does owe the railroad company. As we have before remarked the order of the county court was for an unconditional subscription of stock: The subscription was unconditional. The order for the delivery of the bonds was unconditional.

The deposition of Mr. Elliott, page 123, shows the bonds were deposited with Elliott & Brown *for* the railroad company.

and the county received the stock for the bonds and still holds it. The county paid two years interest to the railroad company, and the register of bonds kept by the county shows an unconditional delivery of the bonds *to the railroad company.*

These facts show a perfect obligation on the part of the county to pay the bonds.

The president of the railroad company had no power to alter or change the contract even had he attempted to do so; but he made no such contract.

The bonds constitute assets belonging to the insolvent rail road company, which a court of equity should take charge of and apply to the discharge of the indebtedness of the insolvent corporation, not because Allen, et. al., are purchasers for value, but because The Illinois River Railroad Company is wholly insolvent and dissolved by non-user, and because Allen, et. al. are unsatisfied creditors, and as the county is a member of the corporation and indebted to it.

The ground for the distinction as to the classification of creditors claimed by Morgan county cannot be maintained. We cite one of the many cases on this question for the consideration of the court if your Honors should wish to again examine the question. In *Sanger vs. Upton 91 U. S. 56*, this court covered the whole ground. It is there held that the stockholder is a member of the corporation, and that the unpaid stock subscription is a trust fund for the payment of the debts of the corporation, to be resorted to by creditors the same as if the money paid on the stock subscription was in the hands of the corporation. Many cases are cited in support of this doctrine.

The county has received credit for all she has in fact paid

over, unless it is to be held that a trustee may speculate in the trust fund to the injury of the creditors. The liability of the county is clearly made out on the doctrine of the opinion last cited. The speculation cannot be permitted on principles of equity.

V.

The eighth position of the county is that the right of Allen et. al. has been heretofore adjudicated; and now appellees are estopped from further claiming to have this fund applied to the payment of their debt We have cited some authority on this question in our original brief; but we will again refer briefly to it.

The learned counsel in their zeal overlooked the material facts and hence, are led into serious error.

Allen, Arnold and Trowbridge were the holders of the bonds of the Illinois River Railroad Company, secured by trust deed on the road bed. Studwell, Hopkins and Cobb were named in the trust deed as the trustees for the benefit of the bond-holders. Neither Allen, Arnold nor Trowbridge were made parties to any of the several suits in the State Court of Illinois, nor in the suit in the United States Circuit Court for the Southern District of Illinois. The trustees were made parties to the bill of interpleader of Elliott & Brown. In that case they filed a bill of interpleader and claimed the bonds in question as belonging to them as trustees under the trust deed. The court held against them on this point. Subsequently Studwell, Hopkins and Cobb as trustees filed a bill in the circuit court of the United States for the Southern District of Illinois, against Morgan county, et. al. The holders of the

Illinois River Railroad bonds, and owners of the judgment in that court rendered for the balance after applying proceeds of sale of trust property, *were not made parties to this suit.* This suit was dismissed by the complainants in the same.

As to anything pertaining to the duties of their office as trustees the action of Studwell, Hopkins and Cobb was and would be binding upon the appellees, Allen, Arnold and Trowbridge, but nothing further.

As to the question whether the Morgan county bonds passed to the trustees by virtue of the trust deed, the decision of the court that they did not so pass is conclusive on the bondholders, but that is all. At to the indebtedness mentioned in this record, the trustees and appellees are strangers. Allen, Arnold and Trowbridge are claiming here not through the trustees nor through the trust deed but as general creditors. As to this the trustees could do no more to affect the rights of the holders of the indebtedness than could any stranger.

As to the bill filed by Studwell, Hopkins and Cobb as trustees in the United States Circuit Court we say they had no standing in that court and could not have maintained a decree in that form because the bill filed did not pertain to any trust fund in which Studwell, Hopkins and Cobb had any equitable rights whatever. They could not enforce a claim for balance due on the debt secured by the trust deed, after applying all proceeds of sale of the trust property. The real owners of this debt were Allen, Arnold and Trowbridge. The fund to be reached was a trust fund, but not the trust fund over which the trustees could exercise any control or do any act binding upon the parties in interest without their consent. Hence nothing found in any of these records concludes or affects the

appellees here.

VI.

The ninth proposition of the county, to-wit: "These complainants are estopped by the decision in the Vail and Ladd case" is unsound and is covered by what we have before said.

It is claimed in the tenth proposition that Allen, Arnold and Trowbridge are estopped by a stipulation of two of the trustees, in substance, that the question whether these Morgan county bonds passed to the trustees should be left to be determined by the courts. The bond holders were neither parties to the suit referred to, nor parties to the said stipulation, nor did the stipulation referred to have even the most remote relation to the fund or property involved in the trust for which the parties stipulating were appointed trustees. The doctrine of estoppel is not favored in law, but is construed strictly. To give it the application contended for would make it singularly dangerous.

The twelfth and last proposition of the county of Morgan is that "complainants are not in a position to seek equitable relief,"

We have entertained serious doubts whether we could with propriety, reply to this part of the brief of counsel.

Lest this honorable court should be impressed with the extraordinary assumptions and perversion of facts contained on pages 76, 77 and 78 of the brief of counsel we respectfully refer to the printed pages of the transcript of the record from which the court may readily see what there is in support of or against the alleged "conspiracy."

After the settlement of the Blair case in November 1867 by payment of $6000 in cash and the delivery of twelve bonds $6000, the remainder, 53 in number, $26,500 remained in cus-

tody of the officers of Morgan county till March 1869, (trans. p. 103) at that time 40 of the bonds were by said court deposited with Mr. Morrison under agreement between The Peoria, Pekin and Jacksonville Railroad Company and Morgan county, that said bonds should be held by Mr. Morrison until the rail road company should complete its road from Virginia to Jacksonville, then to be delivered to said railroad company.

This railroad was completed in July 1869, and the $20,000 of bonds were handed over by Mr. Morrison to the new company under instructions of the county.

The balance of bonds and coupons were burned in March 1869 pursuant to this agreement. The railroad from Virginia to Jacksonville, is the same railroad undertaken to be built by The Illinois River Railroad Company, but was no completed. It was completed by The Peoria, Pekin & Jacksonville Rail Road Company, a corporation organized to succeed the former company. After this road was completed and in operation and the $20,000 in bonds delivered under instruction of the county judge, the county of Morgan, another judge having succeeded Mr. Whitlock, instituted the suit against the Peoria, Pekin & Jacksonville Railroad Company and Mr. Morrison, which was finally heard in the Supreme Court of Illinois, and is reported in 76 Ill. 120, and the facts are clearly stated by Mr. Morrison in his deposition, (p 94 to 100 inclusive). There is no evidence to the contrary.

The struggle in Thomas, et. al. vs Morgan county et. al. supra, was whether, The Peoria, Pekin & Jacksonville Railroad Company having built the same road undertaken to be built by the Illinois River Railroad Company and for the aid of which these bonds were subscribed could legally receive a part of

the bonds from the county on a compromise. Mr. Allen endeavoring to carry into effect said agreement in good faith and setting up no claim to the remainder until the case was heard in the circuit court.

The title of the Peoria, Pekin and Jacksonville Railroad Company was over-thrown in that case, not on the ground that the bonds had been paid as claimed by the county, but on the ground that the bonds were the property of The Illinois River Railroad Company, and liable to payment of the debts of that insolvent corporation. In this case the county succeeded in overthrowing all the decisions previously made by the Supreme Court of the State, and established her liability.

In the case at bar the evidence is much stronger against the county than it was in that case.

In that case the county compelled, by bill, an answer which disclosed the facts; in that litigation Mr. Allen learned for the first time the facts on which the equitable rights of appellees rest. In this is found a comp'ete answer to the point made that delay in filing the bill appears a good reason for not disturbing these transactions.

The county of Morgan instituted the litigation in such manner as necessarily developed the equities of the case. The appellees had a clear equitable right to take advantage of the circumstances and enforce their claim to this fund. If the result of her litigation is disastrous to her it affords no reason why this fund should not be applied to the discharge of the debts of the Illinois River Railroad Company.

Respectfully Submitted.

DEARBORN & CAMPBELL

Atty's for Allen, Et. Al.

SUPREME COURT

OFFICE SUPREME COURT U. S.
FILED
NOV 20 1880
JAMES H. McKENNEY, Clerk.

OF THE

UNITED STATES,

IN EQUITY.

BRIEF AND ARGUMENT

OF

ISAAC L. MORRISON,

FOR

JOHN ALLEN, ET AL.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1879.

No. 337.

THE COUNTY OF MORGAN, APPELLANT,

VS.

JOHN ALLEN AND EDWIN S. TROWBRIDGE,
SURVIVING PARTNERS OF AARON ARNOLD, DECEASED, APPELLEES.

No. 586.

JOHN ALLEN AND EDWIN S. TROWBRIDGE,
SURVIVORS, ETC., APPELLANTS,

VS.

THE COUNTY OF MORGAN, APPELLEE.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

MAY IT PLEASE THE COURT:

These cases are cross appeals from a decree of the court rendered in the suit wherein John Allen and Edwin S. Trowbridge, surviving partners of Aaron Arnold, dec'd, were complainants and the County of Morgan and others respondents.

The bill alleged that the Illinois River Railroad Co. was organized under the statutes of Illinois to build a railroad, the southern terminus of which was Jacksonville, in Morgan county, Illinois; that said company constructed its road from Pekin, in Tazewell county, to Virginia, in Cass county, Illinois; that said railroad company made and executed a deed of trust, dated Nov. 1, 1858, by which it convey-

ed all its tangible property to Alexander Studwell, Lucius Hopkins, and Geo. T. Cobb, as trustees, for the benefit of the bond-holders of the Illinois River R. R. Co. That the Illinois River R. R. Co. issued bonds to the amount of $1,020,000, having twenty years to run with interest warrants attached, and referred to in said trust deed, and secured by the same ; that all of said bonds were put upon the market and sold, to procure funds with which to build said road, and the funds were used in constructing said railroad ; that complainants became the purchasers of all of said bonds, and held the same at the time of filing of said bill ; that said interest warrants were payable at a banking house in New York, and the trust-deed provided that if said railroad company failed at any time to pay the interest, all of said bonds should mature, and the railroad property described in said trust deed, should be surrendered to the said trustees, to be owned and operated for the use of said bondholders ; that the said Illinois River R. R. Co. failed to pay its interest on said bonds, and, on July 12, 1862, the board of directors ordered the surrender of the road, machinery, etc., to the trustees mentioned, and an agent thereupon took possession of the same ; that, on Dec. 17, 1862, said trustees exhibited their bill in chancery in the circuit court of the United States, for the southern district of Illinois, against said railroad company, and others, to forclose said trust-deed ; that on June 16, 1863, a decree was entered ordering the sale of all of said railroad property ; that said property was sold by the Master, under said decree, on Oct. 1, 1863, for the sum of $400,000, which was credited on the decree, leaving a balance unpaid of $1,061,292.56, for which judgment was rendered in said court, at the June term, 1864, of said court : that, on or about July 6, 1869, complainants in said chancery suit settled all their trust accounts with the bondholders, and were fully discharged by the order of said court. A copy of the record in the chancery suit was made part of the bill, as Exhibit A. That an execution had been issued on said judgment, and returned no property found ; that complainants are the equitable holders of said judgment, and that the trustees in whose names the same was rendered, have no interest in the same. That the said sum of $1.061,292.56, with six per cent. interest from date of the judgment, is wholly unpaid ; that the Illinois River R. R. Co. is wholly insolvent, and that its directors have not had a meeting since July 12, 1862. The bill charges that, at an election held in the County of Morgan and State of Illinois, on the day of Nov., 1856, said county, by her legally qualified electors, voted to subscribe $50,000 to the capital stock of said railroad company, payable in the bonds of said county ; that, pursuant to said vote, the county court

did make said subscription ; that, on Sept. 10, 1857, the county court made an order of record, directing the preparation of 100 bonds of $500 each, to be issued in payment of said subscription, due and payable March 1, 1877, at the American Exchange Bank, in the city of New York, said bonds payable to said Railroad Co., and each having interest warrants attached, for the annual interest, at 6 per cent., properly signed and sealed; and deposited the same with custodians for the use of the railroad company, having duly received the certificates of stock from the railroad company, in payment of the same ; that interest began to run from March 1, 1858, and the county paid the interest on each of said bonds for the years ending March 1, 1859 and 1860.

That the Railroad Co., had not paid out or disposed of said bonds, at the time of its insolvency and dissolution, that said bonds and interest warrants, except so for as they have been legally paid are assets applicable to payment of complainants claim against said company. They further allege that Isaac Vail recovered a judgement in the Circuit court of Mason county, Illinois, against said Railroad Co., for something over $5,000.00. That one Ladd also recovered a judgment in Peoria, county, Illinois, against said company for about $1,500.00. That Vail and Ladd instituted proceedings in the Circuit court of Morgan county, Illinois, against said Railroad Co., and others claiming the right to subject said bonds and interest warrants payment of said judgments. That such proceedings were had ;that at the term 1866 of said court, an order was made directing the payment of said judgments, interest and costs. That Ladd having departed this life, Dodge, his administrator was made party; that in said order, by consent, it was provided that Morgan county might retire bonds at forty cents on the dollar in payment of such judgments; that complainants were not made parties to said suit and are not bound by the decree; that at the June term, 1866, was spread upon the records of the county court, this decree; that the sum due at that time, was, to Dodge, administrator, for principal, interest and costs, $1,913.19, and to Vail $5,094.91, making the sum total of $7,008,10; that in payment of this sum the county of Morgan got into her possession of said bonds thirty five in number, being from seven to forty-two inclusive, and which bonds, with the accrued interest being $6,137.50, making $23,639.50 in all; that said bonds and coupons wereburned, but that the county only paid $7,008.10; that the coupons on said bonds, then due, were worth their par value and were more than sufficient to pay off said judgments, interest and costs; that the bonds with the coupons cut off, were worth not less than seventy-five per cent of their par value; that said county burned and de-

stroyed of said bonds about $16,000 more in value, and which were assets of said Railroad Co., than she paid value for, and that she was only entitled, in equity to credit on her subscription to the capital stock of said company, for the cash paid; that the difference, with six per cent interest, is, equitable assets, which should be applied to the payment of claims against said company. That James Blair, Aaron Addis, ann others filed their bill in chancery in said circuit court at the September term, 1867, against the county of Morgan, and others, seeking to set up certain pretended judgments against the Illinois River Railroad Company, making the record in each exhibits; that the several sums with interest and costs amounted to something over $40,000; that complainants in said bill sought to have applied the $32, 500 of said bonds with the interest to the payment of judgments; that at the special November term, 1867, a decree was entered in the said case directing the application of said bonds and interest warrants to the payment of said judgments; that at the same term of said court the special master, appointed to execute said order made a report, from which it appears that he had delivered to the complainants in said bill, the bonds and interest warrants in full discharge of such claims. The bill charges that said suit was not in fact decided by the court; that the decree and master's report were made pursuant to an agreement, as follows:

Creditor's Bill.

Special November term, 1867.

STATE OF ILLINOIS,
Morgan County:

JAMES BLAIR ET AL.
vs.
ILLINOIS RIVER RAILROAD CO. ET ALS.

"It is agreed that all the Morgan county bonds received by complainants in the above entitled suit may be redeemed by the payment to complainants of $6,000 in Morgan county bonds and $6,000 in money, being in all $12,000.

In the event that Morgan county desires it, credit shall be given on the cash payment for a short time, not exceeding

It is further stipulated, that out of said Morgan county bonds and cash the claim of William Thomas, $4,000, shall be paid pro rata with the complainants."

HENRY E. DUMMER,
Sol'r for Compl'ts.

That said bonds were not in fact delivered, but she paid Mr. Dummer cash $6,000, and delivered to him $6,000 of said bonds, detaching the interest warrants falling due March 1, 1866, and before, being 6 years and making $2,160.

That complainants were not parties to the suit, and not bound by the decree; and that said county is only entitled to credit for the cash paid $6,000 and the bonds delivered $6,000, on her stock subscription; that bonds Nos. 43 to 54 inclusive were delivered; that the county should account for all the bonds and interest warrants not in fact paid; that said Dummer was to pay to William Thomas—and did not do so, and that William Thomas prosecuted his suit and obtained $4,000 of said bonds with interest for thirteen years, making about $7,000; that Morgan County, had paid the interest on bonds, from 61 to 100 for one year, interest being $1,200—but that the same were not paid to any creditor of said Railroad Company, nor by its authority; that the same was not a legal payment, and not a credit; that Morgan County cut off all the interest warrants on bonds numbered from 61 to 100 inclusive due from '61 to '68 inclusive and burned them, but that they were unpaid, and are equitable assets of the Company in the hands of the county; that all, said county has paid on the said subscription of $50,000 is $7,008.10, the $6,000 paid to Blair and others, and the delivery of bonds 43 to 54 inclusive.

That, at the sale of the franchises and other property, complainants purchased the same; that they conveyed all of said property purchased, to the Peoria, Pekin & Jacksonville, Railroad Co., a corporation organized under the laws of Illinois, but did not part with their interest in said claim or judgment; that the Peoria, Pekin and Jacksonville Company about July 1st 1869 completed said Railroad from Virginia, in Cass County, to Jacksonville, Morgan County, as originally undertaken to be built, by the Illinois River Railroad Co., and thereupon $20,000 of said bonds numbered from 61 to 100 inclusive, were delivered to said Peoria, Pekin & Jacksonville Railroad Co., with the coupons thereon due March 1st, 1869 and thereafter; that said Railroad Company subsequently paid twenty of said bonds to Isaac L. Morrison; that subsequently to the delivery of said $20,000 in bonds to the Peoria, Pekin & Jacksonville Railroad Co., Morgan County repudiated said delivery, and brought suit in the circuit court of said county, to recover said bonds, and obtained a decree ordering the Peoria, Pekin & Jacksonville Railroad Co., and Morrison to deliver said bonds to said county; that all of said bonds are liable to be applied to the payment of claims against the Illinois River R. R. Co. Charges that the Illinois River R. R. Co. has been dissolved and has no officer on whom process can be served

That as against complainants charges that none of said bonds or interest warrants were paid except as particularly described, and that the remainder should be applied to payment of claims of complainants. The bill prays that an account be taken, and for a decree against Morgan county, and Dummer and Morrison.

The cause was continued from term to term till the June term, 1875, awaiting a decision of the Supreme Court of the State of Illinois, in a case involving the validity of the bonds, and on Sept. 6, 1875, the County of Morgan filed its answer in this case.

The answer admits the organization of the Illinois River R. R. Co. prior to the year 1857, under an Act of the General Assembly of Illinois ; that it was organized to build a railrad from Pekin, in Tazewell county, to Jacksonville, in Morgan county, Illinois ; that it built its road to Virginia, in Cass county, Illinois, and then became insolvent ; that only some surveys were made in Morgan Illinois; avers the charter expires Feb. 11, 1863. Admits Morgan county subscribed $50,000 to the capital stock of said railroad company, the original contract of subscription being as follows :

" We, the subscribers, citizens of Morgan county, hereby subscribe to the capital stock of the Illinois River R. R. Company the number of shares set opposite to our respective names (one hundred dollars being a share). Our said subscriptions to be subject to such rules and regulations as may, from time to time, be made by the directors of said company."

Subscriber's names.	No. of shares.	Am't subscribed.	Am't paid.
The County of Morgan, by Jas. Berdan, county judge, duly authorized by the county court of said county.	500 shares	$50,000	

Alleges an agreement made by the railroad company and the County of Morgan, that said bonds should not be paid out except for labor and material in building the road in Morgan county; setting out a paper in writing as the contract, as follows :

STATE OF ILLINOIS,

Morgan County:

I, R. S. Thomas, president of the Illinois River R, R. Co., certify that that portion of said railroad situated north of the town of Virvinia, in said county, is now in process of construction, and the portion of said road between Jacksonville and Virginia is under contract

to be completed by the first day of December, 1858, and that it is provided, in the contract for the construction of said road, that the Morgan county bonds shall be expended for work done in Morgan county, and not else where.

(Signed) R. S. THOMAS,
Pres. of I. R. R. Co.

And that, on Sept. 10, 1857, the county court made the order filed herewith, and, on that day, deposited $50,000 in bonds with Elliott & Brown, and, simultaneously, the railroad company deposited the certificates of stock for 500 shares ; that said bonds remained in the hands of said bankers till Feb. 28, 1863, when, having been sued as garnishees of of said road, Elliott & Brown filed their bill of interpleader against the Illinois River R. R. Co., Morgan county, Studwell, Hopkins and Cobb, trustees in a deed of trust given by the Illinois River R. R. Co., Richard S. Thomas, William Thomas, Joseph Ladd and Isaac Vail, which resulted in a decree relieving Elliott & Brown from the further custody of said bonds, and, finally, in a decree directing the payment of claims of Ladd and of Vail, and dismissing bills of other parties, except Morgan county ; avers that, of said bonds, $17,500, in nominal amounts, was applied to pay judgments of Ladd and Vail, and $200 to pay legal expenses of Elliott & Brown ; that the transaction was just and fair, and that $3,000 was expended about said suit. That, afterwards, Blair and others, creditors of the Illinois River R. R. Cos. exhibited bill against Morgan county and others, to have said bonds and interest warrants applied to payment of their claims, and, at the term, 1867, of said court, a decree entered, directing such application to the payment of claims against Illinois River R. R. Co. ; that, under that decree, 65 Morgan county bonds, $32,500 in nominal value, being bonds from 1 to 7, inclusive, and from 43 to 100, inclusive, were paid out by the special master to Blair and others ; admits that previous to the rendition of the decree, Morgan county and Blair and others negotiated, and the stipulation set out in said complainants bill, was entered into, and, that, under this decree, the County of Morgan paid Blair and others $6,000 cash, and $6,000 in bonds from 1 to 7 and from 55 to 60, inclusive, the said county retaining in her possession the balance of said bonds, being 53 in number, it being the intent and purpose that said creditors should surrender all their claims and receive the cash and bonds so delivered. Avers that the claims "so bought in" by the County of Morgan were *bona fide* claims against the Illinois R. R. Co. ; that 13 of said bonds were burned by the county, and, subsequently, the remaining 40 bonds

came into the possession of John Allen, one of the complainants; that said county claiming that said bonds came into his possession "without authority of law," and that such proceedings were had that a decree was entered, ordering the return of said bonds subject to the claims of West and others: admits payment of interest, as alleged, but denies that such payment of interest validated the bonds; admits the issue by said Railroad Co. of its coupon bonds for $1,020,000, and believes they were sold to one Alexander Studwell for iron &c., but denies that complainants are the owners, or were at the commencement of this suit. Admits execution of the deed of trust to secure payment of the bonds, to Hopkins, Studwell and Cobb, on all its property, not including stock subscriptions. Admits Illinois River R. R. Co., became insolvent and turned over its property to the trustees, who, for some time, operated the same; that the sale of said Railroad took place, and complainants purchased the same; that respondent has been informed that complainants conveyed the property purchased under said deeree to the Peoria, Pekin & Jacksonville Railroad Co. a new corporation created under the laws of Illinois, but is not sufficiently informed to either admit or deny the same. Said county answering says it believes it to be true that the complainants were not nominal parties to any of the suits instituted and before mentiontioned, in the Circuit court of said county, nor in the Circuit court of the U. S. for the Southern district of Illinois; but avers that Studwell, Hopkins and Cobbs, trustees, &c., for the bond-holders were parties to suit of Elliott & Brown, *vs.* Illinois River R. R. Co. et al. avers; that complainants were the stockholders and owners of the corporation of the Peoria, Pekin & Jacksonville Railroad Co., and as such proceeded to build the Illinois River R. R., from Virginia in Cass county, to Jacksonville, Illinois, and acting through the said Allen, applied to the citizens of Jacksonville, Morgan county, to take stock in said company upon the ground that, the Morgan county bonds in question could not be used, and that the county of Morgan was not liable to pay the same; that upon that ground the city subscribed $50,000 to the capital stock of said company, which was subsequently paid.

The answer then state the defenses relied on, as follows.

"Your respondent therefore claims among other defenses.

First, "That the complainants are not the holders of the bonds of the Illinois River R. R. Co., and therefore their bill should be dismissed."

Second, "That if the complainants are owners and holders of any of said bonds of the Illinois River R. R. Co., the Morgan county

bonds should not be applied to the payment of whatever may be due and unpaid on said railroad bonds, because the said county bonds were by the agreement of parties to the Morgan county subscription competent to contract, only to be paid upon work, in Morgan county, which was never done and the trustees of said bondholders had knowledge of and acquiesced in the said agreement."

Third. "The claims of the complainants are barred by the decrees rendered in the Morgan county circuit court, set forth in the foregoing answer, to which said trustees for the bondholders were parties."

Fourth. "The bonds of Morgan county—$50,000 in amount—originally issued to the Illinois River R. R. Co., and deposited with Elliott & Brown, have all been paid out legally in liquidation of claims of creditors of the Illinois River R. R. Co., as Morgan county not being a trustee, or acting in a fiduciary capacity had a right to buy in the claims of said creditors at a discount."

"On the 14th of April, 1876, complainants filed an amended bill, in which it is alleged that the county was liable to pay interest at 6 per cent. per annum, on the interest warrants from date of their maturity; that the agreement to pay, in the Blair case, $6,000 cash, and $6,000 in Morgan county bonds, was made by said Morgan county, to defraud the creditors of said Illinois River R. R. Co, and is therefore fraudulent and void as to them, and so far, at least as the same resulted in the cancellation or pretended cancellation, or satisfaction of said bonds aad coupons, beyond an amount sufficient to pay the said $6,000 in the matured coupons, and the $6,000 in bonds, are void as to these complainants."

"On Sept. 20, 1876, the County of Morgan filed her answer to the amended bill of complainant, alleging that "the order of the county court of Morgan county, under which the vote in 1856 was taken, by which it is claimed the subscription of Morgan county to the capital stock of said company was authorized, was an order directing a vote of Morgan county for or against three subscriptions of fifty thousand dollars each, to the capital stock of each of three distinct and independent railroad companies, by a single vote, under which those who voted were compelled to vote, and did vote, for or against all of said three subscriptions; that said vote was taken under the general law of 1849, authorizing subscriptions to the capital stock of said railroad companies by municipal corporations, making copy of the order a part of the answer; that no opportunity to vote for or against any one of the three subscriptions was given, and that said order was void."

Fourth. The amount of taxable costs and necessary legal expenses which Morgan county has paid in the litigations relating to said bonds.

Fifth. The amount, date, and number of all bonds and coupons now in possession of defendants.

Sixth. Whether the county of Morgan is entitled to any other credit in respect to said bonds and coupons.

Seventh. That said master after calculating the entire amount of the bonds and coupons issued by Morgan county aforesaid, adding legal interest on matured coupons, will deduct the amounts found under the second, third, fourth, fifth and sixth directions aforesaid, from the amount due as interest at the time of such payments, if such interest was then sufficient, and report to this court the first day of of June next.

Said master was also directed to report whether Herny E. Dummer and Morgan county, or either, are or is liable on account of any compromise made in the Blair case, for any amount paid William Thomas.

Master's report filed July 6, 1877, printed trans. pp. 86, 87, 88.

The master reports that Morgan county issued, on Sept. 10, 1857, 100 bonds, of $500 each—$50,000. All of that date payable March 1, 1877, with 6 per cent. interest—the bonds and annual interest warrants, payable at the American Exchange Bank, New York, interest payable March 1st of each year. These bonds were issued to the Illinois River R. R. Co., and placed in the hands of Elliott & Brown, bankers, for the use of the railroad company. The coupons on all of said bonds falling due March 1, 1859 and 1860, were paid by the county at maturity, for the use of said railroad company.

In response to the second direction he reports that Morgan county has paid in money on account of said bonds, as follows :

June 1st, 1866. To Isaac Vail, in satisfaction of his judgment against said railroad company	$5,094 91
Same date. To Dodge, adm'r, &c., of Ladd, in satisfaction of like judgment	1,913 19
Total	$7,008 10
Costs paid on same	52 72
Nov. 29, 1867. To H. E. Dummer, sol'r for Blair and others	$6,000 00

This includes all the money payments, except as hereafter shown.

In response to the third direction, he finds the bonds delivered to the creditors of said company, as follows ·

Delivered to Elliott & Brown foi expenses in 1st suit, Sept., 1863, matured coupons on bonds 1, 2, 3, 4, 5 and 6, $30 each, due March 1, 1861, and coupon, due March 1, 1862, on bond No. 1, $30—$210.

To William Thomas, Dec. 11, 1875, 8 bonds for $500 each—$4,000 ; and the county paid him in money, in full, of all interest warrants and which takes out of consideration said bonds, and all coupons thereto.

Nov. 29, 1867, delivered to H. E. Dummer, sol'r for Blair, et al., 12 bonds of $500 each—$6,000, with coupons due March 1, 1867, and subsequent years. Jan'y 8, 1876, were sold by the master in chancery of Morgan county, to pay judgments in favor of Schooley and West, No. 61 and 62—$1,000 ; also two coupons on No. 63—$30 each—due March 1, 1870 and 1871, and paid with proceeds said judgments and costs, leaving in the hand of the master 39 cents, and which retired said bonds and interest warrants, after March 1, 1870.

4th. The county has paid, in taxable costs and necessary legal expenses attending litigation about said bonds, as follows :

June 1st, 1866, attorney's fees in cases in the circuit court, in the supreme court (39 Ill. 496), and subsequently in the circuit court $3,500.

Oct. 1, 1869, to Morrison & Epler, attorney's fees in Blair cases and in the U. S. circuit court and in case of Wm. Thomas in the circuit and supreme courts, $1,200.

June 1, 1866, clerk's costs, $52.72.

Jan. 1, 1874, for costs in all these various suits, amounts and dates agreed upon by respective counsel before me, $2,102.66.

5th. That there are in the hands of Morgan county, bonds to amount of $5,000 which should have all the coupons due March 1st, 1867 and subsequently; that there are in the possession of defendant Morrison $9,000 with coupons due March 1st, 1870, and subsequent years; that Morrison has sold two bonds—$1,000—which are in the hands of third parties,

The master finds the county is not entitled to any other credit.

That no claim was made before me, except that the county claim in payment to Vail and Ladd judgments under the decree of the Morgan Circuit court $17,500 were retired. Master made his report on

the basis, that said last named bonds were still in possession of Morgan county, and subsisting obligations.

Under the 7th direction, the master computes amount of bonds and coupons aforesaid, adding the legal interest on matured coupons and deducting amount of payments on matured coupons and bonds delivered. Upon this basis he reports as follows:

"That he has computed the interest due on said bonds, the first interest being for the year, due March 1st, 1861, and has computed interest on each amount of yearly interest from the time the same became due, at the rate of six per cent. per annum, and has in the first instance of payment being made by said county deducted, said payment and in case of subsequent payments he found they did not equal the interest due at the time of such payment, and for convienence and believing it to be equitable he has allowed the county interest at the same rate upon such payments while computing at the same rate against the county interest upon all the coupons from their maturity"

Upon this calculation there was due from the county March 1st, 1877, $72,721.55, including two bonds sold by Morrison, with interest making $1,580.80; if these bonds be not included it would lessen the sum due from the county.

Sum due from county	$71, 140 75
I. L. Morrison	1, 580 80
Total, due March 1st, '77	$72 721 55

Further reports nothing due from Mr. Dummer.

Exceptions were filed by both parties. Trans p. 90.

On July 16th, 1877, cause came on to be heard; and the $9,000 in the hands of Morrison appearing to have been deposited in court for its disposition, and that bonds 81 and 82, were in the hands of persons not parties to this suit, before this suit was commenced. the bill was dismissed, as to said Morrison, Henry E. Dummer and the Peoria, Pekin & Jacksonville Railrord Co.

Secondly. "It was ordered that the exceptions of both complainants and defendants be over-ruled, and the master's report be approved and confirmed."

Thirdly. "That the defendant Morgan county, pay to complainants the sum of $72,539.56 within sixty days from date of decree; and that the county of Morgan pay within sixty days, all the costs of this suit, except the special master's fees which are taxed at $250. And which the complainants were ordered to pay within sixty days."

The county of Morgan prayed an appeal which was granted on condition that she enter into bond in sixty days, in the penalty of $100,000, security to be approved by the clerk. Trans. p. 316.

The sum of $72,539.50 in the decree is for the sum of $71,140.75 found by the master to be due March 1st, 1877, and six per cent. interest per annum from that date to date of decree—$1,308.81.

Appeal bond filed and approved, Sept. 14th, 1877. Trans. p. 317.

Complainants also appealed and filed bond Sept. 14, 1877, which was approved by the court, (trans. p. 318.)

EVIDENCE.

1. Contract of subscription of Morgan county to the capital stock of the Illinois River Railroad Co. of $50,000, payable in 20 year bonds. (Trans. pp. 52 and 53.)

2. Paper signed by R. S. Thomas, Pres. of the Illinois River Railroad Co., and given to Morgan county court. (Trans. p. 53.)

3. Order of the county court of Morgan county, directing the delivery to the Illinois River Railroad Co. of 100 bonds of $500 each, making $50,000, and numbered from 1 to 100, payable to said company 20 years from March 1, 1857, at the American Echange Bank, New York, with 6 per cent. interest warrants attached for the annual interest on such bonds.

4. Register of bonds kept by Morgan county showing date, number, and amount of each of the 100 bonds issued to the Illinois River Railroad Co., to whom delivered, when and how cancelled. (Trans. pp. 236 and 237.)

5. Letter of Elliott & Brown, acknowledging receipt of stock for the county, and of the county bonds, for use of the Illinois River R. R. Co. (Trans. p. 135.)

6. Order of the Morgan circuit court in case of Elliott & Brown vs. Morgan county, et. al., that complainants have $200 in interest warrants to pay their costs and charges. (Trans. p. 59.)

7. Decree in the case of Henry T. Thomas, adm'r, et al., vs. Morgan county, et al., ordering delivery to Ladd, adm'r, $4,782.97 par value of said bonds, in payment of judgment, interest and costs, of $1,913.19; and to Vail $12,737.27, par value of said bonds, in payment of judgment, interest and costs of $5,094.91, making the sum of $17,520.24 in par value, in payment of $7,008.10 of the indebtedness of said railroad company, taking no account of the matured coupons then on the same (p. 62), being $6,562 interest.

8. Decree in the case of James Blair, A. D. Addis, and others, against the Illinois River Railroad Co., Morgan county, M. P. Ayers et al., of Nov. 27, 1867, appointing James Berdan a special master to receive from Ayers, custodian of these bonds, the same for sale to pay claim against the Illinois River Railroad Co. and fixing amount due to each of the complainants. (Trans. pp. 68, 66.)

Report of Berdan, Nov. 30, 1867, showing that he had received from the custodian all of said bonds, $32,500 in nominal amount, and delivered same, with coupons attached, to the solicitors of Blair and others. (Trans. pp. 69, 70.)

Order of county court, June 9, 1866, ordering cancelled Ill. River Railroad bonds dated Sept. 10, 1857, No. 8 to 42, both inclusive with the interest warrants to each, in payment of Vail and of Ladd. (Trans. p. 235.)

9. Agreement of Blair and others, creditors of the Illinois River Railroad Co., through Mr. Dummer, to receive cash $6,000 and $6,000 in bonds, and release all of the claims described in the Blair decree, for which $32,500 in bonds, with over due coupons, were delivered. (Trans. pp. 134, 135.)

10. Order of the county court of Morgan county, March 6, 1869, directing to be burned Illinois River Railroad bonds 1 to 7, inclusive, with interest warrants for 1862, and bonds 55 to 60, both inclusive, with interest warrants attached from March 1, 1861, and the the interest warrants on bonds from 51 to 100, both inclusive, from the year 1861 to 1868, inclusive. (Trans. p. 219.)

11. The Illinois River Railroad Co. was surrendered and its directors held their last meeting in July, 1862.

Deposition of William Thomas, p. 115.

12. Matured obligations of Morgan county, Illinois, were worth their face or par value at all times from 1861 to March, 1876.

Deposition of Mr. Dunlap, p. 91.

Deposition of Mr. Trabue, p. 93.

Deposition of Mr. W. S. Hook, p. 94.

13. Order of the county court of Morgan county, Dec. term, 1856, reciting the vote at the Nov. election, 1856, and that said vote was in favor of a subscription by said county of $50,000 to the capital stock of each of the following named railroad companies:

The Jacksonville & Carrollton Railroad Co., the Illinois River Railroad Co., and the Tonica & Petersburg Railway Co., and empowering James Berdan to subscribe to each, p. 215.

14. Order of same court September term, 1857, ordering issue of $50,000 in bonds to the Illinois River Railroad Co., p. 217.

For the several sums due from the Illinois River Co., to the complainants in the case of Blair and others *vs.* Illinois River R. R. Co., and others. (Trans. p. 243.)

15. Delivery by the clerk Mr. Martin, showing delivery to William Thomas of eight bonds from 64 to 71 inclusive, being $4,000 and paid to him cash $3,600 for accrued interest, and to Mr. Stryker three bonds, 61 to 63 inclusive, &c., for Shcoley and West. (p. 227.)

16. Costs paid by Morgan county, as shown by clerk's certificate $2 102.66. (p. 228.)

The county paid fees in case of Elliott & Brown *vs* Morgan county, et als., in Circuit and Supreme court, $3,500—page 198; and fees in Blair et als., *vs.* Morgan county and others, and in Studwell, Hopkins and Cobb, trustees, *vs.* Illinois River R. R. Co., and others in U. S. Circuit court, Southern district of Illinois,; and in Thomas *vs.* Morgan county, and others, both in the Circuit and Supreme courts $1,200, the first in the latter part of 1866, and the last in Oct. 1869. (p. 99.)

17. John Allen, Edward L. Trowbridge and Aaron Arnold, the complainants, were owners of all of the Illinois R Railroad bonds and interest warrants at the time of begining suit and were still the owners, March 17th, 1876, (page 111)—of $850, or $900,000 in May 1862,—balance afterwards.

Copy of bonds and interest warrants, 299–306.

The errors complained of by the county of Morgan are:

1st. The court erred in rendering a decree in favor of the complainants, when it should have been for appellant.

2nd. The court erred in holding that the vote of Morgan county in November 1876—a misprint for 1856—gave authority to subscribe $50,000 to the capital stock of the Illinois River R. R. Co., and issued bonds to pay for the same.

3rd. The court erred in holding that the General Assembly of the State of Illinois, had any constitutional power to enact the special law approved Jan. 19th, 1857, making valid the '*subscription*' of $50,000 to the capital stock of Illinois River R. R. Co., and directing the issue of bonds to pay off the same.

4th. The court erred in holding that the agreement made by the judges of the Morgan county court, with the Illinois River R. R. Co., that the Morgan county bonds, should not be delivered and paid out, except for work in Morgan county, was not a binding obligation.

5th. The court erred in holding that the county of Morgan was

not entitled to a credit of $17,500 for the payments made to liquidate the claims of Dodge, administrator of Ladd, and Vail, and in determining that the decree in the case of Thomas et al., *vs.* Morgan county et al., allowing such credit, was successfully impeached.

6th. The court erred in holding that Morgan county was a trustee and could not therefore buy in the claims of Blair and others, against the Illinois River R. R. Co., and obtain the benefit of such purchase under the decree rendered in the case of Blair et al., *vs.* Morgan county et al.

7th. The court erred in holding that appellees were of that class of creditors of the Illinois River R. R. Co., who could resort to the bonds of Morgan county for payment, as against the rights of Morgan county, as between it and the Illinois River R. R. Co., to withhold payment of its subscription on the ground the company had never performed its contract to build its road in Morgan county.

8th. The court erred in overruling the exceptions of appellant to the report of the special master, Mr. Knapp.

9th. The court erred in rendering a decree for interest on the interest coupons of the Morgan county bonds.

On the other hand, the appellees have appealed from the decree and assign for error :

1. That the court erred in allowing, as credits upon the subscription of Morgan county, the several sums paid by her as her costs and expenses in the several suits in which she was resisting the payment of her subscription to the capital stock of the Illinois River Railroad Co.

The principal of the bonds maturing while the suit was pending, the court rendered a money decree.

BRIEF.

We submit, in support of the decree rendered by the circuit court :

1. That the vote of the legally qualified voters of the County of Morgan, in the State of Illinois, at the regular November election of 1856, did confer authority upon the county court of said county to subscribe to the capital stock of the Illinois River Railroad Co. and to issue the bonds of the county in payment of the same.

It has never been claimed that the notice required by the statute of the holding of said election, was not given for the requisite length of time, nor that the majority of the legal voters did not vote in favor of said subscription ; but their objection is that the order submitting the question to a vote of the People, submitted a proposition for or against a subscription to the capital stock of three railroad

companies at the same time; that the question submitted was so submitted that the voter must vote for or against each of the proposed enterprises, and, therefor. no authority was given to the county court to make the subscription and issue the bonds.

The 4th section of the Amendatory Act of 1849, reads:

Sec. 4. "No subscription shall be made, or purchase, or bond issued by any county or city, under the provisions of this act, whereby any debt shall be created by said judges of the county court of any county, or by the common council of any city, to pay any such subscription, unless a majority of the qualified voters of such county or city (taking as a standard the number of votes thrown at the last general election previous to the vote had upon the question of subscription, under this act for county officers) shall vote the same; and the judges of the county court of any county, or the common council of any city, desiring to take stock as aforesaid, shall give at least thirty days' notice, in same manner as notices are given for the election of state or county officers in said counties requiring said electors, of said counties or said cities to vote upon the day named in such notices, at their usual place of voting, for or against the subscription for said capital stock, which they may propose to make, and said notices shall specify the company in which stock is proposed to be subscribed, the amount which it is proposed to take, and the time which the bonds proposed to be issued are to run, and the interest which said bonds are to bear; or, in case it is proposed to borrow money to pay such subscription, then the notices shall state the terms upon which said loan is to be effected; and the opinion of the electors shall be expressed upon their ballots 'for subscription' or 'against subscription;' and counted and returned by the judges and clerks of elections, as in other cases, and if a majority of the voters of said county or city, assuming the standard aforesaid, shall be in favor of the same, such authorized subscription or purchase, or any part thereof, shall then be made by said judges or common council. In case any election had under this act is held upon a day of general election, then the number of votes thrown at such general election for county officers, shall be the standard of the number of qualified voters as aforesaid. No bonds shall be issued under the provision of this act by any county or city, excepting for the amounts required to be paid at the time of subscription, and for the amounts of, and at the time when assessments upon all the stock-holders of said company shall be regularly assessed and made payable." Scates Comp. Stat., 950.

By this statute, the length of time notice should be published the rate of interest, and the amonnt of the proposed subscription, and the time when payable, are required to be fixed in the notices; but the mode or manner of submitting two or more proposed subscriptions, at one and the same election is left to the judges of the county, or to the common council. The question then is not one of power; but one of regularity executing a power clearly given. The order was "illegal" but not void:

Supervisors, &c., vs. M. & W. R. R. Co., 21 Ill. R., p. 372.

This was a case prosecuted by the county to prevent the issue of and delivery of the bonds.

The case of

Clark vs. Board of Supervisors &c., 27 Ill. R., p. 305.

was a suit at law to recover on interest warrants on bonds issued upon the authority of an election held in Hancock county, submitting to a vote of the people, two proposed subscriptions at one and the same time. The court there said, "The objection to submitting two separate propostions to subscribe for stock in such manner as the voter has no choice, but to vote for, or against both propositions, may operate as a fraud upon the voters of the county. And when the issue of the bonds is resisted, they cannot be executed and delivered. In this case the election was ordered by the proper tribunal, it was held at the time and in the manner required by law, and for aught that appears, was in all things except the submission of the proposition to take stock to the amount of of the gross sum, in the two roads, strictly legal. The people acquiesced in the election, the board of supervisors issued and delivered the bonds, and afterwards paid some installments of interest. Now in this case, there was not an absence of authority to order the election, but simply an erroneous mode of submitting the question; and we have no hesitation in saying, that it was such a deviation from the correct mode as may be rendered valid by subsequent acts, so as to protect the rights of third parties which may have been subsequently acquired." And in

Johnson vs. Stark County, 24 Ill. R., p. 75,

it was held "That if the irregularity was only such as to avoid the liability upon the grounds of a non-compliance with the law in holding the election, it must be insisted upon before the rights of third parties intervened."

The distinction, we have endeavored to point out is recognized, by this court, and is a well settled rule of law.

Township of East Oakland vs. Skinner, 92 U. S. R., p, 258.

Town of Concord vs. Savings Bank, 92 id, 630.

County of Moultrie vs. Savings Bank, id p. 637.

The county of Morgan issued these bonds in 1857; she paid the annual interest falling due March 1. 1859 and 1860; she voted her stock received for the bonds; she has dealt in these bonds repeatedly since that date; and now as against appellees, she is estopped from raising the question of formality, in any of her orders directing the holding of the election, or issuing and delivery of these bonds.

A municipal corporation may "estop itself like other parties to a contract."

County Randolph vs. Post, 93 U. S. R., 513.

Bigelow on Estoppel, 464.

Moran vs. Conners, 2. Black 722.

Zebrisiki vs. Cleavland, 23. How. 400.

Pendleton County vs. Amy, 13. Wall. 297.

C. & St. L. R. R. Co., vs. Sparta, 77 Ill. 305.

The mode, manner and length of time the County of Morgan has dealt with these bonds is a waiver of "irregularity" in submitting the proposition to a vote.

County of Randolph v. Post, supra,

Waller v. Pendle, 55 N. Y. 325,

Barnard v. Campbell, id 457,

McMaster v. Barnard, id 222,

Kelly v. Scott, 49 id, 601,

Dezell v. O'Dell, 3 How., 315,

Grand Chute v. Wagoner, 15 Wall. 372,

Warren v. Hackett, 1 Black, 336,

Gelpcke v. Dubuque, 1 Wall., 175.

County of Moultrie v. Savings Bank, supra.

Converse v. Fort Scott, id 593.

This irregularity was such as the Legislature of Illinois had the constitutional power to cure by subsequent enactment.

But it is immaterial, in this case, whether the amended charter of the Illinois River Railroad Co., validating the election, was void or not. The facts in the record make it unnecessary to examine that question.

These bonds recite on their face that they were issued "by authority of an act of the general assembly of the State of Illinois, approved November 6th, 1849, and of a vote of the qualified voters of said county, taken in pursuance thereof."

These recitals estop the County of Morgan from disputing the validity of these bonds so far as their issue is concerned, as against appellees, who are creditors, acquiring rights after the bonds were issued.

County of Bates v. Winter, 97 *U. S. R.*, *83*.

County of Warren v. Marcy, *Id*, *96*.

But this amendatory act may be considered in another light.

The 16th section of the "Act to amend the charter of the Illinois River Railroad Co., approved Jan. 29, 1857. Session laws, private, 1857, is as follows:

"The votes taken in the Counties of Morgan and Mason and the city of Pekin for subscribing stock to said railroad company, are hereby declared to have been legaliy made and taken, and stock shall be subscribed by the county courts of said counties, and the proper authority of the city, in pursuance of the order under which said votes were taken, and bonds shall be issued for said subscriptions, accrdingly."

This act gave legislative authority to subscribe. We may conceed the Legislature had not the power to compel the county to incur the debt, yet the county did, in fact, subscribe the stock and issue the bonds after the act took effect. This was binding upon the county.

C. & St. L. R. R. Co. v. Sparta, *77 Ill.*, *505*.

The act of March 11ts, 1854, session laws, 1854, p. 11, sec. 1, provides:

"That any city or county in this state, which, under the provision of an act entitled "an act supplemental to an act to provide for a general system of railroad incorporation, approved Nov. 5, 1849, has heretofore subscribed or may hereafter subscribe for stock in any railroad company, payable in the bonds of said city or county, it shall be lawful for the city council of such city or the judges of

such county, and they are hereby authorized and empowered to issue and deliver to such railroad company the whole or any portion of the bonds of such city or county, payable on such subscription, at any time herafter, when, in their opinion, the interest of such city or county will be promoted thereby, whether the assessments upon the stockholders ot said company have been regularly assessed and made payable or not."

The county had authority to deliver all of said bonds at one time. Having elected to deliver all of them at once, the issue was by full legal authority, and binding.

2. The fourth contention of appellant assumes there was a contract made by the county court with the Illinois River Railroad Co. as to the application of these bonds. This is an erroneous assumption. There was no such contract made, and if made, it was not binding, for want of authority in the president of the company.

The subscription contract was unconditional (printed trans. pp. 52 and 53). The order of the county court directing the issue, was for an unconditional delivery of the bonds (p. 231).

The paper delivered by Mr. Thomas, the president ot the railroad company (p. 53), does not purport to be a contract ; it merely furnishes the information, to the county judges, that the railroad company had made a contract with parties to build the road to Jacksonville, and in this contract the builders of the road had agreed to receive these bonds for work in Morgan county, and not elsewhere. The county did not understand, at the time, that such a contract was made because the bonds were delivered to the railroad company unconditionally (pp. 224 and 225).

From these facts we insist no such contract was made.

But Mr. Thomas had no power, as president of the railroad company, to make such a contract.

The supreme court of Illinois so held in a case involving this transaction.

Morgan county, et al., v. Thomas, et al., 76 Ill., 120.

In either aspect of this question the court ruled correctly in holding the County of Morgan could not resist payment of these obligations on the ground the bonds were appropriated, by means of a contract, to a particular purpose.

3. The 5th, 6th, and 7th propositions may be considered together. The undisputed facts bearing upon this question, are : 1. The Illi-

nois River Railroad Co. became insolvent, and in July, 1862, surrendered all its property and franchises to the trustees under the trust deed, and its directors have not had a meeting since that date. 2. In April or May, 1862, Allen, Arnold and Trowbridge purchased the bonds secured by the trust deed, to the extent of $850,000 or $900,000, and have since owned them. 3. The trust deed was foreclosed by decree in 1863, and the property sold, and, after applying proceeds of sale, a balance was due from the railroad company of over $1,061,000. This was due before the decree in the case pursuant to which $17,500 of bonds were burned. 4. Neither Allen, Arnold or Trowbridge were made parties to any of said suits. 5. In the first case mentioned, the County of Morgan paid only $7,008.10, and got into her possession $17,500 of the bonds with over $6,000 in matured interest warrants. 6. These matured interest warrants were, at the time, worth their face value, in cash. 7. At the time of the payment of the Vail and Ladd judgments, and of the Blair decree, the matured interest warrants, worth par, were more than sufficient to pay all the County of Morgan, did, in fact, pay, of the indebtedness of the Illinois River Railroad Co., and, 8. A fact we think clearly proven, the bonds were unconditionally delivered, and in effect went into the hands of the railroad company.

We do not say the decree in the Vail and Ladd case, was impeached, but we do say appellees were neither parties nor privies and were not bound by the decree.

The Railroad Co., was an insolvent and defunct corporation. The subscription of Morgan county, was assets, for the payment of its debts; had their been no debts, then for the benefit of its stockholders. The remedy was in a court of chancery, where the rights of creditors could be guarded.

Thomas vs. Morgan County et al., 59 Ill., 479.

The bonds in question were trust funds; and the county a trustee, and bound in equity to see to the proper application of the fund, she was only entitled to credit for what she in fact paid—not to speculate.

Morgan county vs. Thomas, 76 Ill., R., 120.

"Each stockholder has a vested right in the stock subscription of every other stockholder."

Chandler vs. Brown, 77 Ill., R., 335.

"The subscribed capital stock of a corporation, as also, all its other property, is a trust fund for the benefit of the general creditors of the corporation, and its governing officers cannot, by agreement with a stockholder, release him from his obligation to pay, to the prejudice of its creditors, except by fair and honest dealings for a valuable consideration."

Melvin, et al., vs. Lamar Insurance Co., 80 Ill., 458.
Sawyer vs Hoag, 17 Wall. R., 106.
New Albany vs. Burke, 11 Wall. 620.
Selma & Tennessee R. R. Co. vs. Tipton, 3. Ala. 787.

In the case of *Melvin, et al., vs Lamar Ins Co. et al., Supra,* the Supreme Court of Ill., held. an agreement made by subscribers to the capital stock of the coporation containing a condition in substance, that the subsribers (Cushman and Harding) might withdraw the funds paid in and cancel the stock, could be enforced for the benefit of the creditors and stockholders, ignoring the condition on the ground that each and all of the stockholders in the corporation, and its creditors had a vested right in the subscription contract and to permit the officers of the corporotion to perform the conditions would be a fraud.

And this seems to be the well settled rule of law:

Blodgett vs. Morrell, 20. Vt. 509.
White Mountain R. R. Co. vs. Eastman, 34. N. H. 124.
Robinson vs. Pittsburgh & Connellsville R. R. Co. 32. Pa. 334.
Graff vs. Pittsburgh & Steubenville R. R. Co. 31. Pa. St. 489.
Stanhope's case, 1. Law R., 1. Chy. Appeal, 161.
Mangty vs. Grand Collier Dock Co. 10. Simms. 519.
Preston vs. Same, 11. Simms. 327.

This court through Mr. Justice Story, said, in
Minor vs. The Mechanics' Bank of Alexandria, 1. Prt. 65:

"But if the subscriptions were feigned and fraudulent the subscriber actual, or pretended, is still bound to comply with all the terms and responsibilities imposed upon him, in the same manner as if he were a *bona fide* subscriber."

If the court will not permit a settlement made by a stockholder with the duly appointed officer of a corporation still in existence, releasing his liability, except upon payment made, will a court of equity treat as payment the delivery of these bonds, without payment when the corporation has ceased to exist; is insolvent, and its assets a trust fund and the creditors not parties to the proceedings,

As to all the bonds and interest warrants coming into the possession of the county of Morgan, except to the extent of $7,008.10, the sums paid to extinguish the judgments of Mr. Vail and Mr. Ladd, and $6,000 cash and $6,000 in bonds delivered for the release of the claims of Blair and others, and the $4,000 in bonds and the interest warrants, on the same to Mr. Thomas; and the sums paid to extinguish the judgments of Schooley and West, and perhaps, the "legal expenses" were "feigned payment," as against appellees who were not parties to any of said suits; as to appellants a fraud.

The interest warrants, matured, at the date of these several payments were worth par, and were more than sufficient to meet all the cash payments the county of Morgan was justified in making to the other creditors of the Railroad Co. It was her duty, to pay her interest; she was a trustee, for the benefit of the creditors of the Railroad Co.; and after the payment of all its debts, she was a trustee for the whole of its stockholders. The court acted, as we think, on the proper principle, in applying the cash to the payment of interest over due. This being done, there was no payment left to apply to the extinguishment of the principal of the bonds.

Besides, such an application of the money due from the county of Morgan, was a waste, of the fund. The Supreme court of Illinois, so held, when discussing this particular transaction.

Thomas, et al. vs. Morgan County, et al. 59. Ill., 479.

It is peculiarly the provice of a court of equity, to prevent waste of trust funds.

The county of Morgan, had no equitable right to speculate in this trust fund. She got credit for all she paid out on the debts of the Illinois River R. R. Co. If we are correct in the position taken, that this subscription, or the bonds issued to pay the same, was a trust fund, to which creditors of the Railroad Co., might resort for payment of debts, and in which all the stockholders had an interest, it needs no citation of adjudged cases to show that she had no right to so deal with the trust fund as to make for herself a profit. The profit realized is still a trust fund.

It appears from her answer and the exhibits filed with it, that she turned over a part of this fund to Mr. Allen, one of appellees and president of the P., P. & J. R. R. Co., to aid in building the same railroad from Virginia to Jacksonville—the same enterprise originally undertaken by the Illinois River R. R. Co.—but built by a new "legal," person and it is plainly inferable from all the facts appear

ing, that, but for her repudiation of this arrangement—*after the road was built*—the matter would have rested. She instituted the proceedings which resulted in a repudiation of that agreement, and now if she pays largely for it, she cannot be heard in a court of equity, to complain. It is the result of her "punic faith."

It is claimed, however, that while it is true appellees were not parties to any of the proceedings by which these bonds were ordered delivered, still, Studwell, Hopkins and Cobb, trustees in the deed of trust to secure the bonds, which are the basis of the indebtedness, held by appellees, were parties to the bill of interpleader of Elliott & Brown, in which suit the title to these bonds was involved; that these trustees answered, and that the decree being against their asserted title, they abided by the decree, and as to them said decree was and is final. That said trustees represented the trust fund, and hence that decree was conclusive on the bondholders.

This is a mistaken view of the case. No stock subscriptions passed to these trustees for the benefit of the bondholders. Only the property described in the deed passed. The trustees represented the bondholders as to the property conveyed—their action in the suit to foreclose the trust deed was binding on them; but after the application of the proceeds of the sale of said property, the balance was a debt, as to which Hopkins, Studwell and Cobb had no concern whatever. They could not bind the creditors as to that balance.

Kerrison, assignee, v. Stewart, et al., 93 U. S.R., 155, and authorities cited.

As to this indebtedness due from the Illinois River Railroad Co., appellees are "general creditors."

Thomas v. Morgan County, et al., 76 Ill., 120,

Henry v. The Versailles & Ashland Railway Co., 17 Ohio, 187,

Miners v. Z. & M. T. Co., 11 Ohio, 237,

Melvin, et al., v. Lamar Insurance Co., 80 Ill., 446,

Sawyer v. Hoag, 17 Wall. 620.

"Creditors might rely on it [the subscription] for the payment of their debts, as implicitly as upon any other assets of the company."

Thomas v. Morgan Co., Supra.

4. If correct in the position assumed in the preceding pages, it follows, the court ruled correctly in overruling the exceptions of appellant to the Master's report, and the 8th assignment of error is without force.

5. The ninth and last alleged error is, that the "court erred in rendering a decree for interest on the interest coupons of the Morgan county bonds."

The interlocutory order directing the special master to calculate interest on the matured interest warrants. The master did so calculate the interest at 6 per cent. per annum, allowing to the county the same rate of interest on payments made. [Print. Trans. p. 88.]

Appellant insists that the Supreme Court of the State of Illinois has decided that the matured indebtedness of counties and cities in Illinois does not bear interest; that this being the interpretation of a statute, this court is bound to follow the rule.

The cases of *Madison county v. Bartlett, 1 Scam., 67,* and the *City of Pekin v. Reynolds, 31 Ill., 529,* are relied on as settling the interpretation of the statute.

These cases were each actions at law. The reasoning of the court is, "that, at common law, interest was not recoverable in any case." And that, as states and counties are not named in the statute regulating interest, the inference is that they were not designed to be required to pay interest on their indebtedness, and in the latter case, it was said it would be presumed the corporation had paid out all its funds to cancel its liabilities. This is a presumption only indulged in at law; but the facts in the record in this case rebut that presumption. There can be no doubt, from the evidence in the record that the County of Morgan had abundant means with which to pay her interest as it fell due. In this, the case at bar differs materially from the cases cited. But we place this case on other grounds. We claim the decree charging the county with 6 per cent. interest per annum on her interest warrants, from maturity, was right; that it was necessary to do so in order to do justice; that the court, sitting as a court of equity, had full and ample power to do so, when the equities of the case justified the same, and that the rulings of the Supreme Court of the State of Illinois do not conflict; but if they do, they are not necessarily binding here.

Not to so hold would have the effect to permit a party standing

in a fiduciary relation to others to make a profit out of the trus fund, which is contrary to the first principles applicable to such a case. The facts bearing on this point are:

That Morgan county set up a claim to have her bonds applied in a particular way, which had no real basis, and by this claim caused a greater part of the litigation over them; after the Vail and Ladd judgments were ordered paid she "retired" ot this fund $17,500 for the payment of $7,008.10 in cash, and at the same time she got over $6,000 of matured interest warrants worth par, but which did not appear as disposed of by the orders of record. By the Blair decrees she got possession of about $30,000 in value of this fund over and above, all she paid for the release of debts due from the Railroad Co. She had the record to show that she paid par for them, when in truth she paid less than thirty per cent. thus concealing by action means, knowledge of the real conditions of the fund. She then used the record in the Blair cases to defeat the recovery of Studwell, Hopkins and Cobb, trustees, against Morgan county, pending in the Circuit court of the U. S., for the Southern district of Illinois at the same time the Blair suit was pending, instituted to reach this fund, the same debt for the satisfaction of which this suit was instituted, See Mr. Dummer's deposition. (Printed trans. p. 123.)

From these facts, will a court of equity require a trustee to pay interest, is the question, we desire to present. If this question can be answered in the affirmative, then the decree of the court below is right notwithstanding the ruling of the Supreme court of Illinois.

"A trustee is held not only to careful management of the trust property, so that it shall not be wasted or diminished, but he is bound to secure its reasonable productiveness and increase. If it lie idle in his hands, without cause, he will be charged interest." "In some instances he will be charged compound interest." *1. Pars. Cont. 122.*

Green vs. Winter, 1. Johns. Chy. 26.

Manning vs. Manning, id. 527.

Schieffelin vs. Stewart, id. 620.

Perry. on Trusts, Sec. 648. and notes.

Barney vs. Saunders, 16. How. 543.

In the last case cited, this court said. "It is a well settled principle of equity, that when a trustee or one standing in fiduciary char-

acter, deals with the trust estate, for his own personal profit, he shall account to the *cestui que trust* for all the gain which he has made." "Such a rule, though rigid, is necessary to prevent malversation."

In *Ogden vs. Laraibee, Adm's. 57. Ill., 408,* the Supreme court of Illinois, when speaking on this subject said:

"The rules of law applicable to trustees, who misapply the trust estate, without notice to the *cestui que trust* seem harsh and severe in their application to particular cases. They are intended, however, to impose a degree of punishment upon the trustee for the wrongful act." In this case the court sustain a decree against a delinquent trustee for interest with annual rests.

And in *Schieffelin vs. Stewart. Supra.* Mr. Chancellor Kent, in treating of the rule, that compound interest would be charged in some cases said: 'It is a certain that the allowance of compound interest is often essential to carry into complete effect the principle of the court, that no profit, gain nor advantage shall be derived by the trustee, from the use of the trust fund."

The decree in the case, before the court, did not charge interest with annual rests; and imposes in effect much less than the legal rate of six per cent. as we shall show hereafter. It was necessary to do this, that equity might be done to appellees; and that appellant might be prevented from realizing a profit. If no interest can be cnarged on matured coupons, then Morgan county has made in this case large gains by her repeated breaches of trust and series of law suits over this fund for about fifteen years.

The delay in payment decreases the value of these securities more than fifty per cent. all of which would be profit to this "trustee."

Whitney vs. *Peddecord, 63. Ill., 249.*

In the case of *Jenkins* vs. *Doolittle, 69. Ill., 415.*, it was held, in a case where a trustee had received funds to pay certain debts, and paid a part only, refused to pay the balance and *set up a claim* to the balance of the fund and failed to sustain his claim, that it was proper to charge him with the funds retained with interest on the same. In the case at bar, the trustee has been claiming the trust fund for about fifteen years, and instead of properly applying funds raised by taxation to pay this interest as it matured, she has retained the money, or otherwise used it, and set up a claim to the fund itself. Equity requires her to pay interest.

In *Walker* v. *Walker, 9. Wal. 757.*, this court said, a court of

equity: "Was the especial guardian of trust funds, and refused to allow to the defaulting trustee any compension for services and charged him, or his estate with interest, with annual rests. In that case, it appeared that Dr. Walker disregarded his trust, and treated the money as his individual property, neglecting to invest for an unreasonable length of time.

In the case at bar, the county of Morgan got into her possession June 1st, 1865, over $16,000 of this fund, paying no value for it and endeavoring to avoid payment of her debt, to the corporation of which she was a member, and persistingly refusing to pay. For these several breaches of trust she should pay. The matured and unpaid coupons received by her and not paid for should be treated as cash received, and unreasonably and wrongfully held unproductive, and the only way, by which the creditors of the Illinois River R. R. Co., can be indemnified and the trustees held to a proper responsibility is to decree the payment of the interest.

The authorities, would justify, a decree for interest with annual rests; but this was not given by the decree, and the county has not been held to the full measure of her responsibility.

Perry on trusts, Sect. 472. Here was the "willful breach of duty."

A municipal corporation may be a trustee.

McDonogh's Executors v. Murdoch, 15 How., U. S., 367.
Vidal v. Girard's Executors, 2 How. 187.
Perry on Trusts, Sect. 42, 43.
Thomas v. Morgan Co., 59 Ill. 479.

"The County of Morgan" has such an interest in the Illinois River Railroad Co., and its assets, as that a court of equity will compel the execution of the duties of trustee in disposing of this fund.

From the facts and circumstances in the record, then, we claim the court below was required to charge interest on matured interest warrants, notwithstanding the rulings of the Supreme Court of Illinois in

Madison County v. *Bartlett, 1 Scam., 67*, and
The City of Pekin v. *Reynolds, 31 Ill., 529.*

But the court did not, in fact, award, by the decree, interest at 6 per cent on but a small part of the interest due.

The 7th "direction" in the order, of reference to the master, is "that said master, after calculating the entire amount of the bonds and coupons issued by Morgan county, aforesaid, adding the legal interest on matured coupons, will deduct the amounts found under

the second, third, fourth, fifth and sixth directions, aforesaid, first from the amount due as interest, due at the time of payments, if such interest was then sufficient, and report to this court by the first day of next June, the balance so found due of principal and interest then due." [Trans. p. 86.]

In response to this direction, the special master reported.

"7th." In response to the seventh direction to compute the amount of bonds, &c, "that he has computed the interest due on said bonds the first interest being for the year due March 1, 1861, and has computed on such amount of yearly interest from the time the same became due, and at the rate of six per cent. per annum, and has, in the first instance of payment being made by the said county, deducted said payment, and in the case of the subsequent payments, he finds they did not equal the interest due at the time of payment, and for convenience, and believing it to be equitable, he has allowed the county interest at the same rate, upon such payments, while computing at the same time, against the county, interest on the coupons from their maturity." (Print. Trans. p. 88.)

The master's recapitulation of interest is as follows:

"Interest on coupons"

1st	amount	found	by	me	....	$ 2,422 80
2d	"	"	"	"	....	5,419 90
3d	"	"	"	"	....	7,795 80
						$15,638 50

(Trans. p. 89.)

On June 1, 1866, when Vail and Ladd were paid their demands in full of $7,008 10, there were six years interest on the whole fifty thousand of bonds, less warrants taken off to pay Elliott & Brown $210 or $17,790, from which deducting the cash paid, and it left due for interest, $10,781.90.

After this first payment which was deducted from the overdue interest, the master, while calculating the interest on matured coupons, also calculated interest at the same rate on the sums paid. The payments made for which the county had credit, were as follows:

Oct. 29, 1867, paid Mr. Dummer, for Blair and others, $6,000.
Solicitors of Morgan county, in first suits, Oct. 1, 1866, $3,500.
Oct. 1, 1869, solicitors, last litigations, $1,200.
Jan. 1, 1874, $2,102.66.

Interest was calculated on each of these sums from date of payment to March 1, 1877, at 6 per cent per annum. We shall attempt to show, that only the $6,000 paid to Mr. Dummer was legally or equitably a proper credit to which the county was entitled; and that the interest on the sums paid Mr. Dummer, for Blair, and the other items of payment. with the interest, should not have been allowed. But to bring before the court, in as compact a form as possible, we tabulate the interest on the $6,000 and the other items, with the interest on each:

Oct. 29, '67, cash paid Mr. Dummer	$ 6,000 00
Six per cent. interest, per annum, from date of payment to Mar, 1, '77—9 years, 4 months	3,380 00
Jan. 1, '66, attorney's fees	3,500 00
Interest at 6 per cent. per annum to March 1, '77—10 years, 9 months	2,256 00
Oct. 1, '69, paid attorney's fees	1,200 00
Interest to March 1, '77, at 6 per cent.—7 years, 4 m'ths	528 00
Jan. 1, '74, paid	2,102 66
Interest from date to March 1, '77,—3 yrs, 2 m'ths	399 45
Total	$13,366 11
Interest on matured warrants	$15,638 50
Deduct these payments	13,366 11
Balance	$ 2,272 39

Which gives the sum of interest on matured warrants which is included in the decree, over and above, the payments above specified.

We say the items of $3,500 paid, $1,200 paid and $2,102.66 paid, were not legal expenses chargable to this fund and neither the principal nor the interest should have been charged up against this fund.

A trustee has a right to be reimbursed for his necessary legal expenses, including sums paid for legal advice in the discharge of their duties as trustees.

Perry on Trusts, Sec. 910.

But not if the suit was improperly brought. *id.*

Counsel fees will be allowed to a trustee, for services in preserving the trust fund, but not when the litigation is to destroy the trust.

(2 Leading cases in Equity, 443, top. paging and cases cited. Stotmar's Appeal, 5. Barr, 414.)

to charge the trustees with the duty of paying interest from and after that date.

Then if we credit the interest charged with the sums erroneously credited to the county, and charge interest on overdue interest warrants from the date of the rendition of the Blair decree Nov. 27, '67, we shall find the sum with which the county stands charged in the decree in this case, is much less than 6 per cent. interest per annum from Nov. 27, 1867, to March 1, 1877, on the matured interest warrants on the unpaid bonds.

So that, in any event, the court dealt very liberally with the appellant, and has charged her with less than she was chargable with on principle of equity, and she cannot rightfully complain if the decree be in all things affirmed.

There was much testimony taken, and which is in the record, as to the market value of Morgan county, 6 per cent. 20 year bonds. I have not made an abstract of it, or called the attention of the court to it, for the reason the interest warrants, were at par, and more than sufficient to meet all payments which the county was legally justified in making, and, the bonds having matured while the suit was pending, a money decree was proper, the market value of the bonds is, therefore, immaterial.

Respectfully submitted,

ISAAC L. MORRISON,

Attorney for Appellee.

Dearborn & Campbell

OFFICE SUPREME COURT U. S.
FILED
SEP 28 1880
JAMES H. McKENNEY, CLERK

SUPREME COURT,

OF THE

UNITED STATES.

IN EQUITY.

BRIEF AND ARGUMENT

BY

DEARBORN & CAMPBELL,

FOR

JOHN ALLEN, ET. AL.

HAVANA, ILL.
C. B. KETCHAM,
1880.